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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

~~No. 317.~~ 31

JULIA H. McLEAN AND GEORGE E. McLEAN,
APPELLANTS,

vs.

RUGGLES W. CLAPP, ABIGAIL L. HASKELL, SARAH A. CLAPP, ADMINISTRATRIX, AND FLETCHER D. CLAPP, EVA K. MINK, AND MARY L. SHAW, HEIRS-AT-LAW OF HENRY CLAPP, DECEASED; WILLIAM E. IVES, JEREMIAH TONDREW, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JANUARY 23, 1888.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Walter Q. Gresham, judge of the circuit court of the United States for the seventh judicial circuit, on Monday, the fourth day of April, in the adjourned March term of said court, in the year of our Lord one thousand eight hundred and eighty-seven, and of our Independence the one hundred and eleventh year.

WM. H. BRADLEY, *Clerk.*

JULIA H. MCLEAN, GEORGE E. MCLEAN, R. M. MCLEAN, and WILLIAM B. MCLEAN *vs.* SARAH L. CHADWICK *et al.* } 10343. In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the second day of May, 1872, came the complainant, by his solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his bill of complaint in said above-entitled cause; which said bill is in the words and figures following, to wit:

2 UNITED STATES OF AMERICA, *Northern District of Illinois.*

To the judges of the circuit court for the northern district of Illinois:

Edwin W. McLean, of the State of New Hampshire and a citizen of the State of New Hampshire, brings this his bill against Lot Chadwick, Henry Clapp, William E. Ives, Jeremiah Tondrow, Nicholas Shuffelt, John Hinderman, and Conrad Mealhouse, all of the county of Lee, Illinois, and citizens of the State of Illinois, and Ruggles W. Clapp and Emily Clapp, his wife, of Washington, and citizens of the District of Columbia; and thereupon your orator complains and says—

That Ruggles W. Clapp, being on the fourth day of December, A. D. 1855, indebted to your orator in the sum of five thousand nine hundred and eighteen and $\frac{66}{100}$ dollars for goods before then sold and delivered, to secure the same, on that day made and delivered to your orator his four certain promissory notes in writing, dated the fourth day of December, A. D. 1885, and payable to the order of your orator as follows: One for five hundred dollars in twenty-five days from date, with ten per cent. interest; one for one thousand dollars in five months from date, with interest at ten per cent.; one for two thousand two hundred and nine $\frac{33}{100}$ dollars eleven months from date, with interest at ten per cent., and one for two thousand two hundred and nine and $\frac{33}{100}$ dollars in seventeen months from

3 date, with interest at ten per cent. per annum; and for the better security — the payment of said sum of money in said promissory notes mentioned the said Ruggles W. Clapp and Emily,

his wife, executed and delivered to your orator a mortgage of the following-described premises, situated in Lee county and the State of Illinois, the said Ruggles being then the owner thereof in fee:

The northeast quarter of section No. thirty-three (33), in township No. twenty-one (21) north of range No. eleven (11) east of the fourth principal meridian, and containing, according to one Government survey, one hundred and sixty acres of land, be the same more or less; also of the following-described lands, situated in the same county and State, to wit:

The undivided half of the east half of the northwest quarter of section No. thirty-three (33), and of the east half of the southwest quarter of section No. twenty-eight (28), all of town. No. twenty-one (21) north of range No. eleven (11) east of the fourth principal meridian; also the northwest quarter of the southwest quarter and the west half of the northwest quarter of section No. thirty-four (34), and the northeast quarter of the southeast quarter of section No. thirty-three (33), in town. No. twenty-one (21) north of range No. eleven (11) east of the fourth principal meridian, and containing one hundred and sixty acres (160) of land, according to the Government survey, be the same more or less; also of the following-described lands, situate in the same county and State, to wit:

4 The undivided half of the east half of the northwest quarter of section No. thirty-three (33) and of the east half of the southwest quarter of section No. twenty-eight (28) and town. No. twenty-one (21), in range No. eleven (11) east of the fourth principal meridian; which said mortgage was duly acknowledged and recorded in the recorder's office of said Lee county on the sixth day of December, 1855, in Book E of Mortgages, page 346, in and by which the said Ruggles and Emily, under their hands and seals, granted, bargained, and sold and conveyed said premises to your orator, his heirs and assigns forever, subject to the condition that if said sums of money should be paid at the time and in the manner therein, then said deed should be void.

And your orator further shows unto your honors that of said promissory notes the first (that for five hundred dollars) has been paid, and that the remainder have not been paid, either in whole or part, except in small part by the credits hereinafter mentioned.

And your orator further says that the said promissory notes were, at or about the time of their execution, left and deposited by him with William E. Ives, who was then and still is a practicing attorney in said Lee county, and who was then and there retained by your orator to collect the same; that said Ives did not obtain the money on said notes nor any part thereof, except the five hundred dollars above mentioned, but, on the contrary, he fraudulently and without consideration gave up said notes to said Clapp in manner following:

5 Some time in the year 1857 the said Ives applied for permission to make an exchange of securities with said R. W. Clapp, representing that said Clapp would pay one thousand dollars cash and give good notes, well secured, for the remainder, which permission was given by your orator on the condition that one thou-

sand dollars should be paid in cash and the remainder perfectly secured, and the said Ives was strictly enjoined by your orator not to deliver up said notes first above mentioned until the cash payment of one thousand dollars was actually made. Notwithstanding these instructions and in violation thereof the said Ives delivered said notes to said Clapp and received from him, instead of the cash payment of one thousand dollars, said Clapp's draft on one Alfred Clapp, of New York, dated December 4th, 1857, and payable sixty days after date, which said draft was protested for non-payment and has never been paid, excepting the sum of two hundred and fifty-four dollars, which was paid on March 23, 1859.

And instead of well-secured, good notes for the remainder of *of* said indebtedness said Ives received the notes of William Jones, Cyrus Craig, and Curtis Cannon, all of which were payable to the order of said Clapp and by him indorsed without recourse, and all of which were worthless then and have been ever since, and — pretended security for said notes the said Ives received three separate deeds of real estate from said Clapp to your orator, and at the same time he (said Ives) executed to your orator his own deed of certain real estate in said county of Lee.

6 And your orator further shows unto your honors that the said notes of William Jones were five in all, and dated June 10, A. D. 1857, each for the sum of two hundred dollars, with interest, payable annually, and due, respectively, in one, two, three, four, and five years after their date; that the said notes of Cyrus Craig were dated Amboy, Nov. 29, A. D. 1856, two for the sum of one thousand dollars each and one for fourteen hundred dollars, and payable, the first two in three and four years after date respectively, and the third in five years after date, all with interest at ten per cent., payable annually; and the said three notes of Curtis Cannon were dated August 1st, 1857, each for the sum of four hundred and thirty-three and $\frac{33}{100}$ dollars, and payable in one, two, and three years respectively, with interest at ten per cent.

And that the said deeds which were given as pretended security for said notes were, first, a warranty deed from the said William E. Ives and Susan, his wife, to your orator, dated June 4th, 1860, of the following-described land in Amboy, Lee county, Illinois, to wit:

A part of lot No. five (5), in block number eleven (11), in said town (now city) of Amboy, commencing thirty-one (31) feet west of the northeast corner of said lot, running then west eighteen (18) feet; thence south on a line parallel with the west line of said lot to the alley; thence along the alley to the land conveyed to J. D. Weddell; thence north along the west line of the said land

7 conveyed to J. D. Weddell to the place of beginning. This conveyance is made, subject to a deed of trust given to the party of the first part, to David Welty, commissioner of swamp lands for the county of Lee, which is for the sum of four hundred dollars, the interest on the same — been paid up to the 4th of March, A. D. 1861, which deed of trust the same E. W. McLain agreed to pay and discharge on or before the 4th of March, A. D. 1861; second, a quitclaim deed from said R. W. Clapp to your

orator, dated December 10th, 1857, of the following-described land, to wit:

The east half of the southeast quarter of section six (6) and a part of the southeast quarter of the northeast quarter of the same section, to wit: Commencing at the southeast corner of said N. E. corner, thence west on half-section line eighty rods; thence north on line of said forty-acres tract fifty-five rods; thence south on section line fifty-five rods to place of beginning, 37½ acres; also a part of the southwest quarter of the southwest quarter of section five (5), to wit: Commencing at the southwest corner of said section, thence north on section line 80 rods; thence east on north line of said forty-acre lot 25 rods; thence south parallel to post line 80 rods to section line, 25 rods to place of beginning, 12½ acres; in all, 120 acres; all in town. nineeen (19) N., range ten (10) east, 4 P. M., in Lee county, Illinois. The party of the first part is to have the down wood and timber on the said land.

Third. A warranty deed from said R. W. Clapp and wife
8 to your orator, dated December 10th, 1857, of the S. E. ¼ of the S. E. ¼ of section 30, town. 20 N., R. 11 east, of 4th P. M.; also the E. ½ of the N. E. ¼ of the S. W. ¼ of section 36, town. 20 N. R. 10 east, of 4th P. M.; and, fourth, a warranty deed from R, W. Clapp and wife to your orator, dated Dec. 10th, 1857, of the S. W. ¼ of section 12, town. 20 N., range 10 east, of the 4th P. M.

And your orator further shows unto your honors that the said notes above described, as taken and received by the said Ives in exchange for the said notes of said Clapp, were each and all of them absolutely worthless by reason of the insolvency of the makers, and have always remained so, and that their value was well known to the said Clapp and Ives at the time of said exchange, and that the said land pretended to be conveyed by the said Ives to your orator had been conveyed by him to another person several months before his conveyance thereof to your orator, and your orator took nothing by such deed; that the land described in the second deed above mentioned was of no value—was "stump land," so called—and had been repeatedly sold for taxes; that to the land described in the third deed above mentioned the said Clapp had, at the time of such conveyance, no title whatever, and that of the land described in the fourth deed an undivided two-thirds was mortgaged for its full value and the other undivided third has been sold by your orator for the sum of eight hundred and fifty dollars; that the worthless and fraudulent character of said securities *were* well known to both said Clapp and said Ives, who combined to-
9 gether for the purpose of defrauding and injuring your orator; and your orator is informed and believes and therefore charges that the said notes so given to the said Ives in exchange were without consideration and secured by the said Clapp to be made for the express purpose of disposing of them to your orator and obtaining the notes first above mentioned, and that such exchange was made without authority of your orator and contrary to his express instructions to Ives, as was well known to said Clapp.

And your orator further shows unto your honors that the said

sum of two hundred and fifty-four dollars received as aforesaid upon said draft and eight hundred and fifty dollars received from the sale of a small portion of said land are all that has ever been received by your orator on account of said indebtedness; that your orator has been during all the time since said notes were given and said pretended exchange was made a resident of a distant State, and did not discover the fraud which had been practiced upon him until many years after it had been perpetrated, and that said sums of money were received before the discovery of the fraud; that the said R. W. Clapp removed from the State of Illinois before the discovery of the fraud by your orator, and his whereabouts were unknown to your orator, but as soon as he discovered him he repudiated the action of said Ives and demanded his notes, which had been given up.

That said Ives was immediately informed by your orator that his action in the exchange was unauthorized and repudiated, and
10 your orator has taken every means in his power since his discovery of the fraud to secure his rights, but without avail.

The said notes and deeds so taken by said Ives in exchange as aforesaid your orator always has been and is now ready and willing to surrender and hereby offers to surrender and deliver up the same to whomsoever it may be ascertained is entitled to the same and to give proper credits for all moneys received on account thereof; and your orator further shows unto your honors that afterwards and on or about the tenth day of January, A. D. 1868, the said Ruggles W. Clapp and wife conveyed by quitclaim deed to Henry Clapp the lands described in said mortgage to your orator for the expressed consideration of one dollar, and that afterwards and on or about the first day of March, A. D. 1869, the said Henry Clapp and wife conveyed the same to Lot Chadwick for the expressed consideration of ten thousand dollars, and that said Lot Chadwick is now in possession of the same; and your orator says that the said conveyance to Henry Clapp was made without consideration, and that the said conveyance to Lot Chadwick was made for a consideration very much less than ten thousand dollars, and that the consideration therefor was not more than one thousand dollars, although the value of the lands is about fifteen thousand dollars, and that both said Henry Clapp and Lot Chadwick, before receiving their said deeds, well knew the circumstances of the exchange of securities so
11 made by said Ives, and they both took their respective conveyances with full notice and knowledge of your orator's rights in the premises; and your orator states that the said mortgage first above mentioned has never been released of record and has always been and is now in your orator's possession, and the said conveyances to Henry Clapp and Chadwick only passed the equity of redemption of said R. W. Clapp and wife in said premises.

And your orator further states that Jeremiah Tondrew, Nicholas Shuffelt, John Hindermann, and Conrad Mealhouse are respectively in possession of a portion of said premises, either as tenants of said Chadwick or otherwise.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed and

may, according to the best and utmost of their respective knowledge, information, and belief, full, true, and direct answer make to the premises, but without oath, their answer on oath being waived, and that the several sums of money due to your orator, as evidenced by the said promissory notes, may be declared to be still secured by the said mortgage, and that said notes may be declared and decreed to be a still subsisting indebtedness and secured by said mortgages; that the said notes and deeds taken by said Ives in said pretended exchange may be ordered to be taken back by the person or persons who may be found to be entitled thereto, and that an account may be taken of the amount due your orator by reason of the premises and the said mortgage foreclosed according to the course and
12 practice of this court, and that your orator may have such further or such other and different relief as the nature of the case may require and as may be agreeable to equity.

And that a writ of subpœna may be issued directing the said Lot Chadwick, Henry Clapp, William E. Ives, Jeremiah Tondrew, Nicholas Shuffelt, John Hinderman, Conrad Mealhouse, Ruggles W. Clapp, and Emily Clapp to appear and answer your orator's bill on the return day thereof; and your orator will ever pray, &c.

EDWIN W. McLEAN,
By his solicitors, WILLIAMS & THOMPSON.
JNO. L. THOMPSON, *Of Counsel.*

Endorsed: Filed May 2nd, 1872. Wm. H. Bradley, clerk.

13 On the same day, to wit, on the second day of May, 1872, there issued out of said clerk's office a writ of subpœna in said entitled cause; which said writ, together with the return of the marshal thereto attached, are in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Northern District of Illinois, } ss:

The United States of America to Lot Chadwick, Henry Clapp, William E. Ives, Jeremiah Tondrew, Nicholas Schuffelt, John Hinderman, Conrad Mealhouse, Ruggles W. Clapp, and Emily Clapp, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of June next, to answer the bill of complaint of Edwin W. McLean, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

permission was g...

[SEAL.] Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Chicago
14 aforesaid, this second day of May, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-sixth.

WM. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I served the annexed writ upon Henry Clapp, Jeremiah Tondrew, Nicholas Schuffelt, John Hinderman, and Ruggles W. Clapp by delivering a true copy thereof to each of them personally on the 4th day of May, 1872, and upon Lot Chadwick, therein named, by leaving for him a true copy thereof, at his usual place of abode, with Sarah Chadwick, a free white person above the age of ten years and a member of his family, on the 4th day of May, 1872, and upon William E. Ives, therein named, by leaving for him a true copy thereof, at his usual place of abode, with S. K. Ives, a free white person above the age of ten years and a member of his family, on the 4th day of May, A. D. 1872, and upon Conrad Mealhouse,
15 therein named, by leaving for him a true copy thereof, at his usual place of abode, with Mrs. Conrad Mealhouse, his wife, a free white person above the age of ten years and a member of his family, on the 4th day of May, 1872; but I have not served Emily Clapp, therein named, as I have not been able to find her in my district.

B. H. CAMPBELL,
U. S. Marshal,
By L. GILMAN, *Deputy.*

Endorsed: Filed May 9th, A. D. 1872. Wm. H. Bradley, clerk.

16 Afterwards, to wit, on the twenty-third day of May, 1872, came Lot Chadwick, Henry Clapp, William E. Ives, Jeremiah Tondrew, Nicholas Schuffelt, John Hinderman, and Conrad Mealhouse, by their solicitors, and filed in said clerk's office their appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance.

UNITED STATES OF AMERICA,
Northern District of Illinois.

In the Circuit Court of the United States, Northern District of Illinois.

EDWIN W. McLEAN
vs.
LOT CHADWICK *et al.* } In Chancery.

We do hereby enter the appearance of Lot Chadwick, Henry Clapp, William E. Ives, Jeremiah Tondrew, Nicholas Schuffelt, John Hinderman, and Conrad Mealhouse, certain of the said defendants.

EUSTACE, BARGE, & DIXON,
Att'ys for said Def'ts Above Named.

May 23d, 1872.

Endorsed: Filed May 23d, 1872. Wm. H. Bradley, clerk.

17 Afterwards, to wit, on the thirteenth day of August, 1872, came Lot Chadwick, by his solicitors, and filed in said clerk's office his answer in said entitled cause; which said answer is in the words and figures following, to wit:

Answer of Lot Chadwick.

UNITED STATES OF AMERICA,
Northern District of Illinois. } *ss:*

In the Circuit Court, Northern District of Illinois.

The answer of Lot Chadwick to the bill of complaint filed against him and others by Edwin W. McLean.

This defendant, saving and reserving to himself, now and at all times, all and all manner of exception to the manifold errors and uncertainties in the said bill of complaint contained, for answer thereunto or unto so much thereof as he is advised it is material and necessary for him to answer, answering, saith—

That as to whether Ruggles W. Clapp was on the fourth day of December, A. D. 1855, indebted to the said complainant in the sum of nine thousand nine hundred and eighteen dollars and sixty-six cents or in any sum whatever, and whether any such indebtedness, if any there existed, was for goods sold and delivered, this respondent hath no knowledge; and as to whether on said day the

18 said Ruggles, to secure said alleged debt, executed and delivered to the said complainant his four certain promissory notes in writing, bearing said date and payable as follows, one for nine hundred dollars, payable in twenty-five days from date; one for one thousand dollars, payable in five months from date; one for two

thousand two hundred and nine dollars and thirty-three cents, payable in eleven months from its date, and one for a like amount payable in seventeen months from its date, this respondent saith that he believes the same to be true, for the reason that when he, respondent, purchased the real estate in the said bill described he was informed by the said Henry Clapp, of whom he so bought, that such notes had been given and had all been paid, and because he was then shown the three last of said notes in the possession of the said Henry, and was then by him assured that they, together with the first note, had all been paid and taken up, and for the reason that said complainant in his said bill admits that the said first note had been paid in full.

And as to the statement in said bill that the said Ruggles W. Clapp and wife executed and delivered to the said complainant, to secure the payment of said notes, a mortgage upon certain real estate described in said bill, this respondent saith that he has no personal knowledge, but saith that it is true that such mortgage ap-
19 pears on the records of the recorder's office in the county of Lee as having been recorded therein on the sixth day of December, A. D. 1855, and further saith that at the date of the making of said notes the legal title to the lands in the said bill described was in the said Ruggles W. Clapp.

And as to the statements in said bill contained that of said promissory notes the first one, being the one for nine hundred dollars, has been paid, and that the other notes have not been paid, either in whole or in part, except in small part by the credits in said bill mentioned, this respondent admits that said nine-hundred-dollar note has been paid, but he denies that the other notes have not been paid, and he avers the fact to be that all said notes have been paid in full.

And as to all the statements in said bill contained as to any and all transactions between the said complainant, William E. Ives, Esq., and as to all the alleged doings of the said William E. Ives in connection therewith, this respondent saith that he has no knowledge, and he therefore denies each and every of the same, but he saith that he is informed and verily believes and therefore states the truth as to all said alleged doings to be as follows, to wit:

That it is true that the said Ives then was and still is a practicing attorney-at-law, resident at Amboy, in said Lee county,
20 and that said notes were left with the said Ives by the said complainant by virtue of an agreement to that effect made between the said complainant and the said Ruggles W. Clapp for their mutual convenience, it being then expected that the said notes would be promptly paid at or before the maturity thereof, and as a matter of convenience the said complainant and the said Clapp, who then appeared to be and professed to be on intimate, friendly, and confidential terms with each other, agreed that said notes should be deposited with the said Ives as a mutual friend and with the direction only that he should receive the pay thereon and forward the same to the said complainant, but that the said Ives was not then or at any subsequent time retained or employed by the said com-

plainant *or* his attorney; that shortly thereafter the said first note, being the one for nine hundred dollars, was paid and taken up, and the money received therefor was by the said Ives forwarded to the said complainant, who was then doing business at Great Barrington, in the State of Massachusetts, and was so forwarded without the deduction of any compensation whatever; that it is not true that the said Ives ever applied to the said complainant for leave or permission to exchange said notes then remaining unpaid in any way
21 whatsoever or to make any disposition thereof whatever, but that, on the contrary, the truth is that the said complainant, some time in the year A. D. 1857, came to said Lee county, where the said R. W. Clapp was then still remaining, and the said complainant and the said Clapp then and there made an arrangement and agreement that the said Clapp should pay and take up the three promissory notes then remaining unpaid by paying the sum of one thousand dollars and giving certain other notes, with real-estate security, for the balance which would remain due upon said three notes after the payment of said one thousand dollars; that the said Clapp not being then ready immediately to comply with the terms of the said agreement, the said complainant in person, at said county, informed the said Ives of the terms of the said agreement and then and there instructed him to consum-ate said agreement as soon as the said Clapp should be ready on his part to comply with the same; that the said arrangement was made by the said complainant in person, and that he then examined the notes and securities which the said Clapp then proposed to give, and which were the same notes and securities which the said Clapp did afterwards place in the hands of said Ives, as hereinafter stated; that afterwards and early in the month of December, in said year, the said Clapp did turn over said notes and securities, as they agreed upon, to the said Ives, and in payment of the said one thousand dollars gave his draft for
22 said amount on one Alfred Clapp, who was then doing business in the city of New York, which draft was made in favor of the said complainant and was payable in sixty days thereafter; which draft was by the said Ives immediately thereafter forwarded to the said complainant, and the said complainant received the same and did afterwards collect a part of the money due upon the same, and that shortly thereafter the said Ives surrendered the said three notes to the said R. W. Clapp, and the said complainant received the said deeds so made by the said R. W. Clapp and which he, complainant, had as aforesaid agreed to receive, and did also receive a certain deed from the said Ives to himself of certain property in the city of Amboy, which the said Ives had sold to said Clapp, but had not conveyed to him, and which said deed *now* so made in pursuance of an agreement between the said complainant and the said Clapp that it should be so made as a security for the judgment of said draft, and that shortly thereafter the said complainant entered into possession of said Amboy property and received the rents and profits of the same for several years and until the time of the destruction by fire of the building standing thereon; and the said complainant also took possession of a part of the lands so con-

veyed to him by said Clapp, and afterwards sold and conveyed
23 the same or a part thereof, and caused all said deeds from the said Clapp and the said Ives to be recorded in the recorder's office in the said county of Lee, and has never reconveyed said premises or any part thereof to the said Clapp or to any person for him, and that the said complainant had, in the year eighteen hundred and fifty-eight, full knowledge of the surrender of said three notes and of all that the said Ives had done in the premises; and that afterwards the said complainant was again in said city of Amboy, at a time not later than the early part of the year eighteen hundred and sixty-two, and then and there received the notes and securities which the said Ives had as aforesaid taken from the said Clapp, and was then again fully informed as to all that the said Ives had done in the premises, and especially that the said three notes had been surrendered to the said Ruggles W. Clapp.

And respondent further saith that he admits it to be true, as stated in complainant's bill, that the sum of two hundred and fifty-four dollars was paid to said complainant on the said thousand-dollar draft on the 23d day of March, A. D. 1859, but whether anything more was ever paid on said draft he is not informed; but he insists that — sum was so received by the said complainant more than fifteen months after the time when said draft was drawn and
24 long after he knew all the facts and circumstances connected with the receiving of said draft by the said Ives and the surrender by the said Ives of the said three promissory notes.

And respondent, further answering, admits that the said complainant received the further sum of eight hundred and fifty dollars from the sale of a small portion of the land so conveyed to him by the said Clapp and being a part of the lands conveyed in the said deeds so delivered by the said Clapp to the said Ives; but he saith that the said money was received by virtue of a sale made by said complainant of said part of said lands, and which sale was so made by the said complainant more than ten years after the said complainant had received the title to said lands by virtue of the said arrangement so communicated by the said Ives, to wit, on the 12th day of March, A. D. (1868) eighteen hundred and sixty-eight.

And respondent, further answering, saith that at the time when he purchased the said lands from the said Henry Clapp, being the lands as against which the said complainant is now seeking to enforce the said mortgage claimed by him to exist, he, respondent, had no knowledge or information as to the said transactions between the said complainant and the said Ruggles W. Clapp and the said William E. Ives; that he, respondent, only knew that the said three notes had been taken up and cancelled and were then in
25 the possession of the said Henry Clapp.

And respondent claims and insists that if any equitable right had ever existed in the said complainant to enforce the said mortgage or the payment of said three notes or any of them or of any part of the indebtedness therein named that he has slumbered upon his rights for a great period of time, to wit, for more than fourteen years prior to the time of the filing of his said bill, and that he

has lost any such rights by his laches and delay, if any such rights ever existed, and that by such laches and delay and the expiration of said time he has lost all right to ask the interference of a court of equity in this behalf, and that he is by law not now entitled to ask for or to receive such aid; and respondent claims and insists upon such equitable bar and limitation against any — by the said complainant for equitable relief in the premises.

And as to the statement in said bill contained to the effect that the said complainant has received no more than the said two sums of $254 and $850 on account of the said indebtedness alleged by him to exist from the said R. W. Clapp, this respondent is not informed and therefore denies the same.

And respondent, as to the statement that the said complainant has been during all the time since the said notes were surrendered a resident of a distant State, this respondent hath no knowl-
26 edge, but has been informed that the said complainant was at that time doing business at Great Barrington, in the State of Massachusetts, and residing there, and so far as respondent has ever had any information on the subject he has supposed him yet to reside there; and as to his statement about his not discovering the alleged fraud which he says was practiced upon him until many years after he says it was perpetrated, this respondent saith that he, complainant, knew everything as to what the said Ives had done in reference to said exchange of papers and knew the situation, conditions as to value, and as to title of all the securities so received by the said Ives more than thirteen years ago.

And, further answering, he saith that the said two sums of money were received by the said complainant long after he knew all about said facts.

And, while respondent admits that the said R. W. Clapp had removed from Illinois many years ago, and, as respondent is informed, about the year 1860, he denies that the whereabouts of the said Clapp was unknown to said complainant, and saith that the said Clapp removed at that time to the city of New York and there long resided, and that the fact of his said residence was during all the time well known to the said complainant.

And as to the said complainant's statement that as soon as he
27 discovered the said Clapp he, the said complainant, repudiated the action of the said Ives and demanded the said notes and immediately informed the said Ives that his action in the exchange was unauthorized, this respondent saith that he is not informed and therefore denies each and every of said statements, and, upon the contrary, insists that the said complainant, with full knowledge, acquired in the said exchange for a period of fourteen years and up to the time of the filing of his said bill; and he denies that the said complainant has until the filing of said bill taken any steps whatever to have said exchange of papers set aside, but has, on the contrary, by his own acts put it out of his power to restore the said Clapp to the position which he occupied before said exchange was made.

And respondent, further answering, admits that on or about the

10th day of January, A. D. 1868, the said Ruggles W. Clapp and wife conveyed to Henry Clapp by quitclaim deed the lands described in said complainant's bill for the expressed consideration of one dollar, and that afterwards and on or about the first day of March, A. D. 1869, the said Henry Clapp and wife conveyed the same to this respondent for the expressed consideration of ten thousand dollars; and respondent further admits that he is now in possession of the same and saith that he has been so in possession ever since the date of the said conveyance to him.

28 But this respondent denies that the said conveyance from the said Ruggles W. Clapp to the said Henry Clapp was made without consideration, and, on the contrary, avers that heretofore, to wit, on the 14th day of October, A. D. 1853, one John V. Clapp, being then seized in fee of a part of said lands, to wit, the east half of the southwest quarter of section number (28) twenty-eight and the east half of the northwest quarter of section number (33) thirty-three, all in township number (21) twenty-one, of range number eleven (11) east, of the 4th principal meridian, did on said day convey the same to one Jason Clapp and one Edwin Clapp, which said deed so conveying said land was filed for record in the recorder's office, in said county of Lee and State of Illinois, on October 29th, A. D. 1853, and was duly recorded in said office in Book J of Deeds, on page 88.

And that on the 29th day of October, A. D. 1853, one Lewis Clapp, being then the owner in fee of the following-described real estate, also situate in said county of Lee, to wit, the northeast quarter of section number (33) thirty-three, in township number (21) twenty-one, of range number (11) eleven east, of the fourth principal meridian, did on that day sign, seal, execute, and deliver a warranty deed, in and by which he conveyed his title to said land to Edwin Clapp, which said deed was afterwards, to wit, on the same day,

29 filed for record in the said recorder's office, and was duly recorded therein in Book J of Deeds, on page 89.

And that on the 28th day of November, A. D. 1855, the said Jason Clapp made, executed, and delivered to one Ruggles W. Clapp a warranty deed, by which he conveyed to the said Ruggles the title to one undivided half of the two tracts of land first hereinbefore described (together with other land in the said deed described), which deed was duly acknowledged, and was filed for record in the said recorder's office, in Lee county, on the 5th day of December, A. D. 1855, and was recorded in said office in Book M of Deeds, on pages 525 and 526.

And that on the 28th day of November, A. D. (1855) eighteen hundred and fifty-five, the said Edwin Clapp and Mary M. Clapp, his wife, did sign, seal, execute, and deliver a certain warranty deed, in and by which they conveyed to the said Ruggles W. Clapp their title in and to the one undivided half of the said two first hereinbefore named parcels of land, and also all of the said parcel of land next hereinbefore described—that is to say, the undivided half of the east half of the northwest quarter of section number (33) thirty-three and the undivided half of the east half of the southwest quar-

ter of section number (28) twenty-eight and all of the northeast quarter of section number (33) thirty-three, all of said parcels of land being in township number (21) twenty-one, of range
30 number (11) eleven east, of the 4th principal meridian; which said deed was executed by the said Edwin Clapp and Mary M. Clapp, in Berkshire county, in the State of Massachusetts, and the execution thereof was acknowledged by the said Edwin Clapp and Mary M. Clapp before John A. Walker, Esquire, who was then and there an acting justice of the peace in and for said Berkshire county, on the said 28th day of November, A. D. 1855, and which was by the said Ruggles W. Clapp filed for record in the recorder's office in said county of Lee on the fifth day of December, A. D. eighteen hundred and fifty-five.

And that on the 10th day of January, A. D. (1868) eighteen hundred and sixty-eight, the said Ruggles W. Clapp and his wife signed, sealed, executed, and delivered to one Henry Clapp their deed, in and by which they conveyed to the said Henry all their right, title, and interest in and to all the lands hereinabove described, which deed was duly acknowledged and was filed for record in said recorder's office on the 30th day of January, A. D. 1868, and was recorded in Book 17 of Deeds, at page 51.

And that on the first day of March, A. D. eighteen hundred and sixty-nine (1869), the said Henry Clapp and Sarah A., his wife, signed, sealed, executed, and delivered their deed, by which they conveyed to this respondent all the said parcel of land here-
31 inabove described, the execution of which said deed was duly acknowledged by the said Henry Clapp and wife, and the said deed was filed for record in said recorder's office on the 30th day of March, A. D. 1869, and was recorded in said office in Book Number 14, at page 547.

And respondent, further answering, saith that the said John V. Clapp and Lewis Clapp, from whom the said conveyances have thus above been traced, held the title to all said lands in trust for the said Henry Clapp, and that the said Ruggles W. Clapp never had equitable interest or title in or to said lands or any part thereof, but took the title to said lands as a naked trustee for the said Henry, and that if any mortgage was ever made by the said Ruggles to the said McLean, the complainant herein, it was made to secure the payment for a stock of goods bought for the said Henry, and which was in fact sold and disposed of by the said Henry in a store kept at Amboy, in said Lee county, and out of the avails of which stock of goods the said notes to the said complainant were, as this respondent was informed and verily believed, paid in full; and so this defendant denies that the said conveyance from the said Ruggles to the said Henry was made without consideration, and saith that the same was made for the purpose of vesting the legal and the
32 equitable interests in said lands in one person, to wit, the said Henry Clapp.

And as to the statements in said bill that the conveyance from the said Henry to this respondent was made for a consideration very much less than ten thousand dollars, and that the consideration was

not more than one thousand dollars, this respondent denies all of the same, and saith that the purchase price of said lands was ten thousand dollars and the consideration named in said deed was truly stated, and that he has paid to the said Henry Clapp for the said lands the full sum of ten thousand dollars.

And this respondent, further answering, denies that at the time he so purchased said lands and received his deed therefor or at any time prior thereto he had any knowledge whatever of the circumstances of the exchange of securities in the said bill said to have been made by the said Ives, but, on the contrary, he saith that he then believed that the said indebtedness to the said complainant had been fully paid, and again saith that at the time of his said purchase the said Henry produced the said three notes and assured respondent that the same had been by him fully paid, and that the other of the notes, being the first of the series, had also been paid and taken up, but that the said Henry had not the same in
33 his possession, and respondent was then assured and believed that it was on account of some controversy between the said Henry and his brother, the said Ruggles, in reference to said first note that the said mortgage to the said complainant had not been released of record.

And respondent denies that at the time he made said purchase he had any knowledge, information, or belief that the said complainant had or claimed any rights in the premises.

And respondent admits that, so far as he knows, the said mortgage has never been released of record, but whether the same is now and has always been in the possession of said complainant this respondent is not informed and therefore denies.

And this respondent further denies that the said conveyances to Henry Clapp and to this respondent passed only the equity of redemption of said Ruggles W. Clapp and wife in said premises.

And as to the statement in said bill to the effect that Jeremiah Tondrew, Nicholas Shuffeldt, John Hinderman, and Jonas Mealhouse are respectively in possession of portions of said premises as tenants of the respondent, he saith that it is true that at the time of the filing of the said bill they were so in possession as tenants of this respondent and having no other interest therein.

34 Without this, that any other matter or thing in the said bill stated or charged and not herein and hereby well and sufficiently confessed, answered and avoided, traversed or denied, is true to the best of the knowledge, information, or belief of this respondent; and, having fully answered, he prays to be hence discharged with his reasonable costs in this behalf by him most wrongfully sustained.

LOT CHADWICK.

EUSTACE, BARGE, & DIXON,
Att'ys and Counsel for Def't.

Endorsed: Filed Aug. 13, '72. Wm. H. Bradley, cl'k.

On the same day, to wit, on the thirteenth day of August, 1872, came Henry Clapp, by his solicitors, and filed in said clerk's office his answer in said entitled cause; which said answer is in the words and figures following, to wit:

35 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court, Northern District of Illinois.

The answer of Henry Clapp to the bill of complaint filed against him and others by Edwin W. McLean.

This respondent, saving and reserving to himself, now and at all times, all and all manner of exceptions to the manifold errors and uncertainties in the said bill of complaint contained, for answer thereunto or unto so much thereof as he is advised it is material and necessary for him to answer, answering, saith—

That as to whether Ruggles W. Clapp was, on the fourth day of December, A. D. 1855, indebted to the said complainant in the sum of five thousand nine hundred and eighteen dollars and sixty-six cents or in any sum whatever, and whether any such indebtedness, if any there existed, was for goods sold and delivered, and as to whether on said day the said Ruggles, to secure said alleged debt, executed and delivered to the said complainant his four certain prom-
36 issory notes in writing, bearing said date and payable as follows: one for five hundred dollars, payable in twenty-five days from date; one for one thousand dollars, payable in five months from date; one for two thousand two hundred and nine dollars and thirty-three cents, payable in eleven months from its date, and one for a like amount, payable in seventeen months from its date, this respondent saith that he believes the same to be true, but saith that the said debt was contracted under the circumstances hereinafter stated, and that the said indebtedness has been paid in full and the said note surrendered.

And respondent, further answering, admits that he believes it to be true that the said Ruggles W. Clapp did execute a mortgage to the said complainant to secure the payment of said notes, and believes that the property named in said bill was the property conveyed by said mortgage, and the said mortgage was delivered and was recorded in the recorder's office in the said county of Lee, in the State of Illinois, at the time and place stated in said bill; and that at the time of the making of the said mortgage the legal title to the property therein described was vested in the said Ruggles W. Clapp.

And as to the statements in said bill contained that of said
37 promissory notes the first one has been paid and that the other notes have not been paid, either in whole or in part, except in small part by the credits in said bill mentioned, this respondent admits that the first note has been paid, but he denies that the others have not been, and saith that every one of said notes has been paid in full, and that he, the said respondent, was the party on whose account said notes were given and who was equitably bound

to pay the same, and that he did discharge said indebtedness in full, and that with the exception of the said first note, the payment of which the said complainant in his said bill admits, and which said note respondent supposes to have been surrendered to the said Ruggles W. Clapp, all the others of said notes were taken up for and on behalf of this respondent more than fourteen years ago and were surrendered to him more than eight years ago by the said Ruggles W. Clapp.

And as to all statements in the said bill contained as to any and all transaction- between the said complainant and the said William E. Ives, Esq., and as to all the alleged doings of the said Ives in connection therewith, this respondent denies the same and saith that the truth as to all said alleged transactions and doings is as follows, to wit:

That it is true that the said Ives then was and still is a practicing attorney-at-law, resident at Amboy, in said Lee county, and
38 that said notes were left with the said Ives by the said complainant by virtue of an agreement to that effect made between the said complainant and the said Ruggles W. Clapp for their mutual convenience, it being then expected that the said notes would be promptly paid at or before the maturity thereof, and, as a matter of convenience, the said complainant and the said Clapp, who then appeared to be and professed to be on intimate, friendly, and confidential terms with each other, agreed that said notes should be deposited with the said Ives as a mutual friend, and with the direction only that he should receive the pay thereon and forward the same to the said complainant; but that the said Ives was not then or at any subsequent time retained or employed by the said complainant as his attorney; that shortly thereafter the said first note, being the one for five hundred dollars, was paid and taken up and the money received therefor was by the said Ives forwarded to the said complainant, who was then doing business at Great Barrington, in the State of Massachusetts, and was so forwarded without the deduction of any compensation whatever.

That it is not true that said Ives ever applied to the said complainant for leave or permission to exchange said notes then remaining unpaid in any way whatever or to make any disposition thereof what-
39 ever, but that, on the contrary, the truth is that the said complainant, some time in the year A. D. 1857, came to said Lee county, where the said R. W. Clapp was then still remaining, and the said complainant and the said Clapp then and there made an arrangement and agreement that the said Clapp should pay and take up the three promissory notes then remaining unpaid by paying the sum of one thousand dollars and giving certain other notes with real-estate security for the balance which would remain due upon said three notes after the payment of said one thousand dollars; that, the said Clapp not being then ready immediately to comply with the terms of the said agreement, the said complainant in person, at said county, informed the said Ives of the terms of the said agreement, and then and there instructed him to consummate said agreement as soon as the said Clapp should be ready on his part to comply

with the same; that the said arrangement was made by the said complainant in person, and that he then examined the notes and securities which the said Clapp then proposed to give, and which were the same notes and securities which the said Clapp did afterwards place in the hands of said Ives as hereinafter stated; that afterwards and early in the month of December in said year the said Clapp did turn over said notes and securities, as then agreed upon, to the said Ives, and in payment of the said one
40 thousand dollars gave his draft for said amount on one Alfred Clapp, who was then doing business in the city of New York; which draft was made in favor of the said complainant and was payable in sixty days thereafter; which draft was by the said Ives immediately thereafter forwarded to the said complainant, and the said complainant received the same and did afterwards collect a part of the money due upon the same; and that shortly thereafter the said Ives surrendered the said three notes to the said R. W. Clapp, and the said complainant received the said deeds so made by the said R. W. Clapp, and which he, complainant, had as aforesaid agreed to receive, and did also receive a certain deed from the said Ives to himself of certain property in the city of Amboy which the said Ives had sold to said Clapp, but had not conveyed to him, and which said deed was so made in pursuance of an agreement between the said complainant and the said Clapp that it should be so made as a security for the payment of said draft, and that shortly thereafter the said complainant entered into possession of said Amboy property and received the rents and profits of the same for several years and until the time of the destruction by fire of the building standing thereon; and the said complainant also took pos-
41 session of a part of the lands so conveyed to him by said Clapp and afterwards sold and conveyed the same or a part thereof and caused all said deeds from the said Clapp and the said Ives to be recorded in the recorder's office in the said county of Lee, and has never reconveyed said premises or any part thereof to the said Clapp or to any person for him; and that the said complainant had, in the year eighteen hundred and fifty-eight, full knowledge of the surrender of said three notes and of all that the said Ives had done in the premises; and that afterwards the said complainant was again in said city of Amboy at a time not later than the early part of the year eighteen hundred and sixty-two, and then and there received the notes and securities which the said Ives had as aforesaid taken from the said Clapp, and was then again fully informed as to all that the said Ives had done in the premises and especially that the said three notes had been surrendered to the said Ruggles W. Clapp.

And respondent further says that he admits it to be true, as stated in complainant's bill, that the sum of two hundred and fifty-four dollars was paid to said complainant on the said thousand-dollar draft on the twenty-third day of March, A. D. 1859, but whether anything more was ever paid on said draft he is not in-
42 formed; but he insists that said sum was so received by the said complainant more than fifteen months after the time

when said draft was drawn and long after he knew all the facts and circumstances connected with the receiving of said draft by the said Ives and the surrender by the said Ives of the said three promissory notes.

And respondent, further answering, admits that the said complainant received the further sum of $850 from the sale of a small portion of the land so conveyed to him by the said Clapp and being a part of the lands conveyed to him by the said Clapp and being part of the lands conveyed in the deeds so delivered by the said Clapp to the said Ives, but he says that the said money was received by virtue of a sale made by said complainant of said part of said lands and which sale was so made by the said complainant more than ten years after the said complainant had received the title to said lands by virtue of said arrangement so consummated by the said Ives, to wit, on the 12th day of March, A. D. 1868.

And respondent, further answering, saith that at the time when he sold to Lot Chadwick the said lands stated in the said bill to have been sold to him by the respondent respondent well and truly believed that the entire indebtedness which had been due to
43 the said complainant, as evidenced in and by the said four promissory notes, had been fully paid; that respondent then had in his possession, cancelled, the last maturing three notes of said series and knew that the first note had been surrendered by the said complainant, of all of which this respondent informed the said Chadwick at the time of said sale.

And respondent claims and insists that if any equitable right ever existed in the said complainant to enforce the said mortgage or the payment of said three notes or any of them or any part of the indebtedness therein named that he has slumbered upon his rights for a great period of time, to wit, for more than fourteen years prior to the time of the filing of his said bill, and that he has lost any such rights by his laches and delay, if any such rights ever existed, and that by such laches and delay and the expiration of said time he has lost all rights to ask the interference of a court of equity in this behalf, and that he is by law not now entitled to ask for or to receive such aid, and respondent claims and insists upon such equitable bar and limitation against any claim by the said complainant for equitable relief in the premises.

44 And respondent — as to the statement that the said complainant has been during all the time since the said notes were surrendered a resident of a distant State this respondent has no knowledge, but has been informed that the said complainant was at that time doing business at Great Barrington, in the State of Massachusetts, and residing there, and so far as respondent has ever had any information on the subject he has supposed him yet to reside there; and as to his statement about his not discovering the alleged fraud which he says was practiced upon him until many years after he says it was perpetrated, this respondent saith that he, complainant, knew everything as to what the said Ives had done in reference to said exchange of papers, and knew the situation, con-

dition as to value and as to title of all the securities so received by the said Ives more than 13 years ago.

And, further answering, he says that the said two sums of money were so received by the said complainant long after he knew all about said facts. And while respondent admits that the said R. W. Clapp had removed from Illinois many years ago, and, as respondent is informed, about the year 1860, he denies that the whereabouts of the said Clapp was unknown to said complainant, and says that the said Clapp removed at that time to the city of New York and
45 there long resided, and that the fact of his said residence was during all the time well known to the said complainant.

And as to the said complainant's statement that as soon as he discovered the said Clapp he, the said complainant, repudiated the action of the said Ives and demanded the said notes, and immediately informed the said Ives that his action in the exchange was unauthorized, this respondent says that he is not informed and therefore denies each and every of said statements, and, upon the contrary, insists that the said complainant with full knowledge acquiesced in the said exchange for a period of fourteen years and up to the time of the filing of his said bill, and he denies that the said complainant has until the filing of said bill taken any steps whatever to have said exchange of papers set aside, but has, on the contrary, by his own acts put it out of his power to restore the said Clapp to the position which he occupied before said exchange was made.

And this respondent, further answering, admits that on the 10th day of January, A. D. 1868, the said Ruggles W. Clapp and wife conveyed to this respondent by a quitclaim deed the lands described in said mortgage for the expressed consideration of one dollar,
46 and that on the first day of March, A. D. 1869, this respondent and his wife conveyed said lands to said Chadwick for the expressed consideration of ten thousand dollars, and that the said Chadwick is now in possession of the said lands; but this respondent denies that the said conveyance from the said Ruggles W. Clapp to this respondent was made without consideration, and saith that the equitable title to said land had been vested in this respondent ever since the time that the Government of the United States parted with its legal title thereto, which was many years ago and as long ago as about the year 1850.

That in and about the year 1850 this respondent built a log cabin on said lands, and has lived upon said lands continuously from that time up to the date of his sale of said lands to said Chadwick; that at the time when said lands were purchased of the United States this respondent had not the means of making such purchase, and made contracts with certain parties by which they located military land warrants upon said lands and gave this respondent time in which to pay for the same, and that afterwards this respondent borrowed from certain relatives of his of the name of Jason Clapp and Edwin Clapp a sufficient sum of money with which to pay the indebtedness due to the parties who had located said warrants; and thereupon the said parties conveyed the legal title to said
47 lands to the said Jason Clapp and Edwin Clapp, who there-

upon held said title in trust for this respondent, and that afterwards this respondent paid to the said Jason and Edwin the entire amount of his said indebtedness to them, and they thereupon, at his request, conveyed the legal title to said lands to the said Ruggles W. Clapp, who held the same in trust for this respondent and who never had any equitable interest in the said lands or in any part thereof, and that while the said Ruggles W. Clapp held said legal title he executed the said mortgage to the said complainant, and that afterwards, when the said mortgage debt had been paid in full, the said Ruggles conveyed to this respondent the legal title to said lands.

And as to the said conveyance by this respondent to the said Chadwick, the same was made for an actual consideration of ten thousand dollars, as stated in said deed, and all of which sum of money has been fully paid by the said Chadwick.

And as to the said statement in said bill that at the time of the making of the said deed to the said Chadwick he, the said Chadwick, knew the circumstances connected with the exchange of securities as made, as herein stated, through the said Ives, this respondent saith that he has no knowledge that the said Chadwick knew
48 anything at all as to the said exchange, but that at and before the time of the making of the said deed, this respondent informed the said Chadwick that the said mortgage debt to the said complainant had been paid in full, and exhibited to the said Chadwick the said three promissory notes, being the three notes last maturing, cancelled, and then in the possession of this respondent, and then informed the said Chadwick that the other note, being the one maturing before either of the said three notes became due, had been taken up and was in the possession of the said Ruggles W. Clapp.

And respondent, further answering, says that he admits it to be true that the said mortgage has never been released of record, but as to whether the said mortgage has always been and now is in the possession of the said complainant this respondent is not informed, and he therefore denies the same.

And as to the statement in said bill that Jeremiah Tondrew, Nicholas Schufeldt, John Hinderman, and Conrad Mealhouse are respectively in possession of a portion of said premises, either as tenants of said Chadwick or otherwise, this respondent, answering, says that he believes it to be true that at the time of the filing of the said bill they were in possession of parts of said premises,
49 but that they were in possession only as tenants of the said Chadwick so far as this defendant is advised and believes.

Without this, that any other matter or thing in the said bill stated or charged and not herein and hereby well and sufficiently answered, confessed and avoided, traversed or denied, is true to the best of the knowledge, information, or belief of this respondent; and, having fully answered, he prays to be hence discharged with his reasonable costs herein by him most wrongfully sustained.

HENRY CLAPP.

EUSTACE, BARGE & DIXON,
Att'ys & Counsel for Def't.

(Endorsed:) Filed Aug. 13, 1872. Wm. H. Bradley, clerk.

On the same day, to wit, on the thirteenth day of August, 1872, came William E. Ives, by his solicitors, and filed in said clerk's office his answer in said entitled cause; which said answer is in the words and figures following, to wit:

50 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court, Northern District of Illinois.

The Answer of William E. Ives to the Bill of Complaint Filed Against Him and Others by Edwin W. McLean.

This respondent, saving and reserving to himself, now and at all times, all and all manner of exception to the manifold errors and uncertainties in the said bill of complaint contained, for answer thereunto, or unto so much thereof as he is advised it is material and necessary for him to answer, answering, says—

That as to whether Ruggles W. Clapp was, on the 4th day of December, 1855, indebted to the complainant in the sum of five thousand nine hundred and eighteen dollars and sixty-six cents, and as to whether such indebtedness, if any existed, was for goods before that time sold and delivered, this respondent saith that he has no knowledge, but has been informed that at or about that time it was claimed that the said Clapp was indebted to the complainant
51 in some amount, and that said indebtedness arose in whole or in part on account of goods sold and delivered.

This respondent, further answering, says that he believes it to be true that at or about said date the said Ruggles W. Clapp did execute and deliver to the complainant four promissory notes, which as to amount this respondent believes are correctly described in said bill, but as to when the said notes or any of them became due this respondent has now no knowledge or recollection; and respondent further saith that he believes it to be true that to secure the payment of said notes the said Ruggles W. Clapp did execute and deliver to the complainant a mortgage upon certain lands in Lee county, Illinois, but as to whether the said lands are properly described in the said bill and as to whether the said mortgage was executed by the wife of the said Clapp this respondent has now no knowledge or recollection; that as to whether said mortgage was recorded in the recorder's office of said county he believes that it was recorded, but at what time he is not informed.

And, further answering as to the statement that the first of said notes, being the one for five hundred dollars, has been paid, he saith that the said statement is true, but as to the statement that
52 the remainder of said notes have not been paid, either in whole or in part, except in a small part by the credits mentioned in said bill, this respondent saith that said statement is not true, but saith that all of said notes have been fully paid and taken up.

And this respondent, further answering, saith that it is true that at the date of said notes he, the said respondent, was and still is a practising attorney in said Lee county, and that it is true that said notes were at or soon after their date left and deposited with him by the said complainant; that he denies that he was then or at any time since retained by said complainant to collect said notes, but, on the contrary thereof, he says that said notes were left with him by mutual agreement between the said complainant and the said Clapp, who were both then at Amboy, in said Lee county, a place where this respondent then and ever since resided and had his office, and that they were so left as a matter of mutual convenience between the said parties and with no other obligation or duty on the part of this respondent than that as fast as any money should be paid upon the said notes or any of them this respondent should receive the money and forward the same to the said complainant at his then
place of business, in Great Barrington, in the State of Massa-
53 chusetts, and that accordingly, in pursuance of said arrange-
ment, when the said Clapp shortly thereafter paid the said five-hundred-dollar note, this respondent received the money and forwarded the same to the said complainant without any charge or compensation whatever, and he admits that said money was all that he ever received on any of said notes.

And as to the statement in said bill that this respondent ever fraudulently and without consideration gave up said notes to said Clapp, and as to the statement that this respondent applied to complainant for permission to make an exchange of securities with said R. W. Clapp, and that he ever represented that said Clapp would pay one thousand dollars in cash and give good notes, well secured, for the remainder, this respondent denies each and every of said statements and saith that no one of the same is true; but this respondent avers the truth to be that the said complainant some time in the said year 1857 came to said Lee county, where the said R. W. Clapp was then yet residing, and the said complainant and the said Clapp thereupon made an arrangement and agreement that the said Clapp should pay and take up the three promissory notes then remaining unpaid by paying the sum of one thousand dollars and
giving notes, made either by himself or by other parties,
54 but all with real-estate security, for a sum in all amounting
to the balance which would remain due upon the said three notes after the payment of the said one thousand dollars; that the said Clapp not being then ready immediately to comply with the terms of the said agreement, the said complainant thereupon personally informed this respondent as to the tenor and terms of the said agreement, and thereupon instructed this respondent to consummate said agreement as soon as the said Clapp should be ready on his part to comply with the same.

And respondent saith that he cannot state the precise time in 1857 when said arrangement was made, but believes it to have been in the summer of that year, and further saith that said arrangement was made wholly by the said complainant himself with the said Clapp, and at that time the said complainant made his own examination as to the

notes and real estate and the securities thereon which the said Clapp proposed to give in exchange as aforesaid, and that the notes and deeds which the said Clapp did afterwards place in the hands of this respondent, as hereinafter stated, were the same notes and deeds which the said complainant in and by the said agreement stipulated and contracted should be so delivered in satisfaction of said
55 three notes after the said one thousand dollars should have been paid.

And this respondent saith that he, respondent, never examined any of the said securities; that he never had any occasion to examine them; that he had nothing to do with them except to receive them and to receive said one thousand dollars, and thereupon to deliver up to said Clapp the said three promissory notes, all of which he was authorized to do by the said complainant.

And respondent further saith that afterwards and before said arrangements had been concummated and shortly after the 17th day of November, A. D. 1857, the respondent received a letter from the said complainant, of which the following is a copy:

"GT. BARRINGTON, MASS., *Nov.* 17, 1857.

W. E. Ives, Esq.

DEAR SIR: It is a good while since I have heard from you. I wrote you some three weeks since requesting you to write me what the prospect was of Clapp paying and making the change of paper as he agreed when I was at your place. I also wrote him at
56 the same time, but have not heard from him since. I have been waiting anxiously to hear from you and have been hoping to receive some money from him. Please write me per return mail and give me all the information you can about my matters and what Clapp expects to do for me and when I may expect some money from him. Times are hard here, and I want the money very much in my business. I see that money is getting easier in New York and exchanges are getting back to the old rates. I also wrote you to send me separate receipts for each of the notes which you hold for collection, and when I receive them I will return the receipt I now hold. I shall expect to hear from you soon, and I hope you will be able to get some pay out of Clapp, for I do need it. How do the times affect the price of real estate with you; has it fallen off much; if not, will it not do so? What is wheat worth with you?

Respectfully yours, E. W. McLEAN.

And the respondent further says that shortly after the receipt of said letter and early in the month of December, 1857, the said Ruggles W. Clapp, in order to pay the said sum of $1,000, made his draft on his brother, Alfred Clapp, who was then doing business in the city of New York, for said amount, payable to the order of the complainant sixty days after date, which draft was given by
57 said R. W. Clapp to this respondent and was by him immediately forwarded to the said complainant, and that before said draft became payable the said complainant wrote again to this

respondent a letter bearing date January 22nd, 1858, which letter is as follows:

NEW YORK, *Jan'y* 22, '58.

W. E. Ives, Esq.

DEAR SIR: I am in trouble in my business matters. Our store was closed last week by the sheriff. I am now in New York trying to compromise matters with my creditors so that I can go on again. They know something of my matter West.

I have represented the condition which they are in as being bad; that I brought suit last spring, and that the parties plead usury, and that I did not know when I should realize on it and how much. I turned out one of the $2,209 notes as collateral last spring, and I have represented that I now have a note of $1,000 & a note — $2,200, which is what I have in my hands. You will probably be called upon in relation to the matter, and you will, of course, represent it as a bad concern and doubtful what will come out of it, as I am sure we can truly think and say. A. Clapp has not
58 accepted the draft, but thinks R. W. will send the funds to pay it. I hope he will, but have fears about it. Do what you can for me. Let me hear from you at Gt. Barrington.

Truly yours, E. W. McLEAN.

Confidential.

State whether parties have written you or called on you; and, if so, what you told them.

Respondent further says that up to the time of the receipt of that letter he had been assured that the said draft would be paid at its maturity, but about that time he became satisfied that it would not be, and believing that he could secure the said indebtedness evidenced by said draft he made the following arrangement, to wit:

Respondent had been at that time the owner of the property in Amboy which is described in said bill, which was then worth in cash the sum of $1,800, but was subject to an incumbrance of $400 in favor of David Welby, drainage commissioner of said county, and which said property this respondent had sold to Ruggles W. Clapp, but had as yet not conveyed to him, and respondent,
59 by the consent of the said Clapp, was to hold the title to said land as security for the payment of said draft, and respondent did then or shortly after make and execute a deed of said Amboy property to the said R. W. Clapp, which said deed, when delivered, would have conveyed a perfect title and fee simple in and to said Amboy lot, but which said deed was never in fact delivered, but was by this respondent forwarded to the said complainant, to be by him held until the said draft should be paid.

And respondent further says that thereupon the said draft being as to its payment in this manner secured, this respondent consummated the entire arrangement as it had been agreed upon between the said complainant and the said R. W. Clapp, as hereinabove recited, and took from the said R. W. Clapp the deeds and notes referred to in the complainant's bill and surrendered to him the said

three promissory notes, of all which actings and doings the said complainant shortly thereafter had notice, but at what precise time this respondent is now unable to state, but knows and avers that he had such notice some times in the year 1858, and, as respondent believes, very early in said year.

60 And respondent further says that the $1,000 draft above referred to was made by the said R. W. Clapp at the request of the said complainant.

And respondent further says that he had nothing further to do with the business between the said complainant and the said Clapp until the summer in the year 1860, at which time, it appearing that the whole of the said draft had not been paid, this respondent, at the request of both the said Clapp and the said complainant, executed a deed conveying the said Amboy property directly to the said complainant, and the deed which he had executed to the said Clapp as aforesaid, and which had never been delivered, was surrendered to this respondent, and which conveyance to said complainant was to be taken, as the respondent was then informed, by both parties as a satisfaction of the balance due upon the draft; and the said McLean immediately thereafter took possession of the said Amboy property, on which said property there had stood a store building, and the said complainant held possession of said property and received the rents and profits of the same for several years and up to the 27th day of March, 1865, at which time the said store was destroyed by fire.

61 And the respondent further says that all the notes and deeds mentioned in the said bill as having been received in exchange for the promissory notes held against the said R. W. Clapp were by this respondent surrendered and delivered up to the said complainant, at his request, some time not later than the year 1862 and either in said year or the year preceding, which said delivery was made to said complainant in person, in the office of said respondent, in Amboy, in Lee county, Illinois.

And respondent further saith that the said deed so as aforesaid made by this respondent to the said complainant was by the said complainant filed for record in the recorder's office in the said county of Lee on the sixth day of June, A. D. 1860, and was recorded in said office, in Book Ten, page 173.

And respondent further saith as to the lands described in the deed from R. W. Clapp to complainant, first by him described in his bill when describing the deeds which were given when the promissory notes were surrendered, that at the time of its date the legal title to the 120 acres of land therein described was in one Jacob Armstrong, but that the said Jacob Armstrong had, on the 10th day of January, A. D. 1855, entered into a contract for the conveyance thereof to one Amaziah Carpenter, which said article of agreement was filed for record in said recorder's office on the 23rd day of March, A. D. 1857, and was duly recorded in said office, and that on the 30th

62 day of March, A. D. 1857, the said Carpenter, by deed of that date recorded on the 31st day of March, A. D. 1857, in said recorder's office, in Book S of Deeds, page 309, conveyed to

said Ruggles W. Clapp all the right, title, and interest in and to said lands which he, the said Carpenter, had acquired under and by virtue of said articles of agreement; and so respondent saith that the said deed described in the said complainant's bill conveyed to the said complainant an equitable right in said lands of great value.

And respondent further saith, as to the lands described in the second deed stated to have been made to the said complainant by the said Ruggles W. Clapp at the time of the surrender of the said three promissory notes, that the said Ruggles W. Clapp had good legal title to all the lands therein described, and that the said deed to the said complainant was filed for record in the said recorder's office on the 11th day of March, A. D. 1858, and was duly recorded in said office in Book T of Deeds, at page 186.

And respondent further saith, as to the lands described in the third deed stated to have been made to the said complainant by the said Ruggles W. Clapp at the time of the surrender of the said three promissory notes, that the deed conveying the same from the said Ruggles W. Clapp to the said complainant was recorded in
63 the recorder's office of said Lee county on the 11th day of March, A. D. 1858, in Book T of Deeds, page 186.

And that at the time of the execution and delivery of said deed the said Ruggles W. Clapp had good legal title to all the lands therein described, and that the same were unincumbered in any was, so far as the respondent has any knowledge or information or so far as appears from the records in said recorder's office.

And respondent, further answering, says that as to the statement in said bill that during all the time since said notes were given and said exchange made he, the said complainant, has been a resident of a distant State, and that he did not discover the fraud which he says in his bill has been practiced upon him in this behalf, this respondent saith that, as he is informed and believes and charges to be true, the said complainant and the said Ruggles W. Clapp were, at the time of making the said original notes, intimate friends and apparently in confidential relations with each other; that it is true, as respondent believes, that the complainant was not a resident of the State of Illinois, but he was present in said State in 1857 and made the arrangements hereinabove stated, and was again in Illinois, in Lee county, in 1862, and had an interview with this respond-
64 ent, and, as respondent believes, at that time the said complainant was thoroughly informed as to all the circumstances connected with the transfer and exchange of said securities, and that with such full knowledge entered into the possession of the said Amboy real estate and of parts of lands so conveyed to him by the said R. W. Clapp, and for years afterwards acted as the owner thereof; that the said R. W. Clapp did remove from the State of Illinois in the year 1860, and went to reside in the city of New York, where he long remained, and where, as this respondent believes, the said complainant was in the habit of frequently seeing him.

Respondent, further answering, denies that the said complainant ever repudiated the action of respondent in connection with any of the matters aforesaid, or ever demanded the notes which had been

given up, or ever informed respondent that his action in the exchange was unauthorized and repudiated.

This respondent, further answering, saith that he has no knowledge or information and therefore denies that the said complainant ever made any effort to have said exchange of securities set aside, but, on the contrary, respondent saith that the said complain-
65 ant was, in the month of January, A. D. 1862, fully informed as to all the facts and circumstances connected with the said exchange, and has from that time until the filing of his bill in this cause, being a period of more than ten years, made no attempt whatever to enforce the collection of the said three notes or in any way interfere with or change the said arrangement and settlement so as aforesaid made by this respondent, at the request of the said complainant and with his knowledge, with the said Ruggles W. Clapp, and that it is out of the power of the complainant and has been put out of his power by his own act to restore said securities to the said R. W. Clapp.

And as to all the other matters and things in the said complainant's bill stated or charged, this respondent, answering, saith that he is not informed and therefore denies each and every of the same; without this, that any other matter or thing in the said bill stated or charged and not herein and hereby well and sufficiently answered, confessed and avoided, traversed or denied, is true to the best of the knowledge, information, and belief of this respondent; and, having fully answered, he prays to be hence discharged, with his rea-
66 sonable costs in this behalf most wrongfully sustained.

WILLIAM E. IVES.

EUSTACE, BARGE & DIXON,
Att'ys & of Counsel for Respondent.

(Endorsed:) Filed Aug. 13, 1872. Wm. H. Bradley, cl'k.

67 Afterwards, to wit, on the eleventh day of October, 1872, came the complainant, by his solicitors, and filed in said clerk's office his replication to the answers of Lot Chadwick, Henry Clapp, and W. E. Ives in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

Circuit Court of the United States, Northern District of Illinois, *ss:*

EDWIN W. McLEAN
vs.
LOT CHADWICK *et al.* } In Chancery.

The replication of Edwin W. McLean, complainant, to the answer of Lot Chadwick, Henry Clapp, and W. E. Ives, defendants.

The complainant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies to the said answer, for replication thereunto says that he will aver and

prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answers of the defendants are uncertain, untrue, and insufficient to be replied unto by this complainant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all
68 which matters and things this complainant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

EDWIN W. McLEAN,
By WILLIAMS & THOMPSON, *His Sol'rs.*

Endorsed: Filed Oct. 11, 1872. Wm. H. Bradley, cl'k.

69 Afterwards, to wit, on the first day of February, 1873, in the December term of said court, 1872, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWIN W. McLEAN
vs.
LOT CHADWICK *et al.* } Chancery.

On motion of the complainant, by his solicitor, it is ordered that Dwight Heaton, Esq., of Dixon, Illinois, be, and he is hereby, appointed an examiner, under the amended sixty-seventh rule in equity of the Supreme Court, to take proof herein and report the same to the court.

70 Afterwards, to wit, on the twenty-third day of April, in the adjourned March term of said court, 1873, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWIN W. McLEAN
vs.
LOT CHADWICK *et al.* } Chancery.

On motion of the defendants, by their solicitors, the complainant is hereby ruled to show cause within ten days why he should not file additional security for costs herein.

Afterwards, to wit, on the second day of May, in the adjourned March term of said court, 1873, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWIN W. McLEAN
vs.
LOT CHADWICK *et al.* } Chancery.

Now come the parties, by their solicitors, and the rule for the complainant to show cause why he should not file additional security for costs now coming on to be heard, the surety appears in open court and justifies, and, being deemed sufficient, the said rule is hereby discharged.

71 Afterwards, to wit, on the eleventh day of July, in the July term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWIN W. McLEAN
vs.
LOT CHADWICK *et al.* } In Chancery.

It is ordered by the court that this cause be dismissed for want of prosecution, at complainant's cost, and that execution issue therefor.

72 Afterwards, to wit, on the eighth day of November, in the adjourned October term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWIN W. McLEAN
vs.
LOT CHADWICK *et al.* } In Chancery.

On motion of said complainant and upon his affidavit the order of dismissal entered herein on the eleventh day of July last is hereby set aside and this cause is hereby reinstated upon the docket, and it is ordered that notice of this order be served upon the defendants within thirty days.

73 Afterwards, to wit, on the fifth day of December, 1882, came Lot Chadwick, by his solicitors, and filed in said clerk's office his appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance.

UNITED STATES OF AMERICA,
Northern District of Illinois.

In the Circuit Court of United States, Northern District of Illinois.

EDWIN W. McLEAN
vs.
LOT CHADWICK *et al.* } In Chancery.

We hereby enter our appearance specially for the defendant Lot Chadwick in the above-entitled cause for the purpose of asking that the said cause may be stricken from the docket.

DIXON & BETHEA,
Att'ys for Def't Lot Chadwick.

Dec. 5, 1882.

Endorsed: Filed Dec. 5, 1882. W. H. Bradley, clerk.

Afterwards, to wit, on the 27th day of December, 1882, came Lot Chadwick and filed in said clerk's office his affidavit in said entitled cause; which said affidavit is in the words and figures following, to wit:

74 *Affidavits, &c.*

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the Circuit Court of the United States for the Northern District of Illinois.

EDWIN W. McLEAN
vs.
LOT CHADWICK, HENRY CLAPP, WILLIAM E. IVES, Jeremiah Tondrew, Nicholas Shuffelt, John Hinderrman, Conrad Mealhouse, Ruggles W. Clapp, and Emily Clapp. } In Chancery.

Lot Chadwick, being first duly sworn, on his oath says that he is one of the defendants in the above-entitled cause; that he is ninety years of age, and resides at the village of Lee Center, in the county of Lee, in the State of Illinois; that he is informed and believes that Edwin W. McLean, who was complainant in said cause, departed this life on the 25th day of February, A. D. 1875, and that Charles J. Taylor, of Great Barrington, in the State of Massachusetts, was administrator of the estate of said Edwin W. McLean.

Affiant further states that he has been informed of the order in said court on the 8th day of November, A. D. 1882, reinstating said cause therein, and also of the contents of an affidavit of one

Martin L. Arnold, filed in said cause on the same day, and
75 which apparently was the foundation for said order of the court.

Affiant further states that he is the owner of the lands upon which it is sought by the said suit to establish a lien in favor of said Edwin W. McLean; that he became owner of said lands in good faith, for an adequate and valuable consideration, at the time and in the manner set forth in his answer on filed in said cause, and that he is the only party defendant materially concerned in the subject-matter that was sought to be litigated in said cause, and he denies that it is true that at any time since he acquired said lands or at any time since the filing of the bill of complaint in said cause has he, or any one authorized by him, negotiated with said Martin L. Arnold or any other person for a settlement of any matters sought to be litigated in said cause, and he denies that he has by any act or word held out to said Arnold or any other person any hope or expectation of a compromise thereof.

Affiant further states that ever since the commencement of said suit he has believed, and since learning the contents of the letter from Charles J. Taylor, administrator of the estate of said Edwin W. McLean, which is annexed to the affidavit of Sherwood
76 Dixon, to be filed herewith, is satisfied, that Martin L. Arnold is the instigator of said litigation, and that said suit was never instituted by the person named as complainant therein, but was commenced and prosecuted and now attempted to be revived by said Martin L. Arnold in the hope of so harassing affiant in his old age as to induce affiant to pay him, said Arnold, to buy his place; and affiant is well satisfied that the administrator of the estate of Edwin W. McLean, and no one authorized to represent him, has any intention or desire to prolong said litigation, and affiant therefore desires that the order reinstating said cause may be revoked and set aside.

his
LOT x CHADWICK.
mark.

Witness:
A. Z. BODINE.

Subscribed and sworn to before me this 23rd day of December, A. D. 1882.

ALBERT Z. BODINE,
Justice of the Peace.

STATE OF ILLINOIS, } ss:
Lee County, }

I, Charles H. Gardner, clerk of the county court in and for said Lee county, do hereby certify that A. Z. Bodine, Esq., is a justice of the peace in and for said county, duly commissioned, sworn,
77 and authorized to act as such; that his commission as such justice of the peace is dated April 30th, 1881, and expires April 30th, 1885, as appears to me of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court. Done at my office, in the city of Dixon, this 26th day of December, A. D. 1882.

[SEAL.] CHARLES H. GARDNER,
Clerk County Court.

UNITED STATES OF AMERICA,
Northern District of Illinois, } ss:

In the Circuit Court of the United States for the Northern District of Illinois.

EDWIN W. McLEAN
vs.
LOT CHADWICK, WILLIAM E. IVES, HENRY CLAPP, *et als.* } In Chancery.

Sherwood Dixon, being first duly sworn, on his oath states that he is one of the solicitors for Lot Chadwick, a defendant in the above-entitled cause; that on or about the ninth of December, A. D. 1882, affiant wrote to the register of probate of Berkshire county, Massachusetts, enquiring as to the death of Edwin W. McLean and the name of the administrator of his estate, and that on or about the 16th of the same month, in due course of mail, received
78 a reply thereto, which reply is annexed hereto, marked Exhibit A; that thereupon, on the 16th day of December, A. D. 1882, affiant wrote to Charles J. Taylor, at Great Barrington, Massachusetts, a letter, of which a copy is annexed hereto, marked Exhibit B, and on the 22nd inst. received from said Charles J. Taylor, in the due cource of mail, a reply to said letter, which reply is annexed hereto, marked Exhibit C; and further affiant saith not.

SHERWOOD DIXON.

Subscribed and sworn to before me this 26th day of December, A. D. 1882.

[SEAL.] CHARLES H. GARDNER,
County Clerk.

79 Hon. J. T. Robinson, judge. E. T. Slocum, register.

COMMONWEALTH OF MASSACHUSETTS,
Berkshire County. }

Office of Register of Probate and Insolvency.

PITTSFIELD, *Dec.* 13, 1882.

Mess. Dixon & Bethea, att'ys-at-law.

DEAR SIRS: The probate records in this office show that Edwin W. McLean, late of Gt. Barrington, in this county, died Feb. 25, 1875; that Chas. J. Taylor, of s'd Gt. B., was appointed administrator of his estate M'ch 3, 1875.

The estate was solvent and the returns to the court show that the

estate was settled, save a balance of $91.36 of the personal property in his hands at the time he filed his last acc't, Dec. 5, 1877, & which was probably soon after paid over to the heirs.

Yours resp't'y, E. T. SLOCUM, *Reg'r.*

80 Sherwood Dixon. Solomon H. Bethea.

Law Offices of Dixon & Bethea.

DIXON, ILL., *Dec.* 16, 1882.

Mr. Charles J. Taylor, Gt. Barrington, Mass.

DEAR SIR: We learn from the register of probate of Berkshire county that you were administrator of the estate of the late Edwin W. McLean. We represent the defendants in a chancery case which was instituted in 1872 in the United States circuit court at Chicago, Ills. The case was entitled Edwin W. McLean *versus* Ruggles W. Clapp, Henry Clapp, William E. Ives, Lot Chadwick, and others. After being allowed to drag along for a number of years, the suit was by the court dismissed for want of prosecution in July last. Recently one M. L. Arnold, of Amboy, in this county, is attempting to have the suit reinstated and proceeded with. He claims now to be half owner of the claim sought to be asserted in the suit. Entertaining serious doubts whether this litigation was ever instituted by Mr. McLean's orders, and also doubting whether the present effort to revive it is done by your direction or approval, we take the liberty to request you to inform us whether it is or not.

Yours very resp'y, DIXON & BETHEA.

81 GREAT BARRINGTON, MASS., *Dec.* 19, 1882.

Messrs. Dixon & Bethea, Dixon, Ills.

GENTS: I have yours of the 16th. Yes, I was the administrator of E. W. McLean, dec'd. It is a long time since I looked at McLean's papers, and my memory does not immediately recall all his transactions with Arnold, of which I was at one time quite well informed, but I do very well remember that I arrived at the conclusion that Arnold was a rascal and disposed to swindle McLean. I do not now remember that I ever authorized the suit in question, but I certainly have not in the past three or four years.

Truly yours, CHAS. J. TAYLOR.

Endorsed: Filed Dec. 29, 1882. W. H. Bradley, clerk.

82 Afterwards, to wit, on the twenty-second day of January, 1883, in the December term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWIN W. McLEAN
vs.
LOT CHADWICK *et al.* } In Chancery.

Now comes the complainant, by Messrs. Williams & Thompson, solicitors, and the defendant Lot Chadwick comes also, by Mr. Dixon, his solicitor; and now comes on to be heard the motion of said defendant to vacate the order of November eighth, A. D. 1882, setting aside the order of dismissal and reinstating said cause upon the docket for trial; and the court, having heard read the affidavits in support of said motion, together with the arguments of counsel, and being now fully advised in the premises, overrules said motion; and thereupon, on motion of the defendants, the complainant is ruled to file a bill of revivor herein within twenty days, the complainant to close his proofs within ninety days, and the defendants to have sixty days thereafter in which to take testimony in rebuttal; and it is further ordered that upon the filing of said bill of revivor the complainant shall give additional security for costs, to be approved by the clerk.

83 Afterwards, to wit, on the ninth day of February, 1883, in the December term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWIN W. McLEAN
vs.
LOT CHADWICK *et al.* } In Chancery.

On motion of Messrs. Williams and Thompson, complainant's solicitors, the time for said complainant to file his bill of revivor herein is hereby extended ten days.

84 Afterwards, to wit, on the tenth day of February, 1883, came Julia H. McLean and others, by their solicitors, and filed in said clerk's office their bill of revivor in said entitled cause; which said bill of revivor is in the words and figures following, to wit:

Bill of Revivor.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the Circuit Court of said District. December Term, A. D. 1882.

To the honorable judges of said court, in chancery sitting:

Your orators, Julia H. McLean, of the State of Massachusetts, widow of Edwin W. McLean, late of said State, deceased; George E. McLean, Minnie R. McLean, and William B. McLean, only children and heirs-at-law of said deceased, respectfully represent unto your honors that on or about the — day of ——, A. D. 18—, said Edwin

W. McLean exhibited his bill of complaint in this honorable court against Ruggles W. Clapp and Emily Clapp, then of Washington, in the District of Columbia, and now —, and Lot Chadwick, Henry Clapp, William E. Ives, Jeremiah Tondrew, Nicholas Shuffelt, John Hinderman, and Conrad Mealhouse, all then and now of the county of Lee, in said State of Illinois, as defendants thereto, containing certain statements and allegations therein set forth, and praying that said defendants might, if they could, show why said Edwin W. McLean, your orator in said bill of complaint, should not have the relief herein asked for and to that end should answer said bill; and further praying that the several sums of money averred in said bill to be due your said orator as evidenced by four certain promissory notes for the total and principal sum of five thousand nine hundred and eighteen & $\frac{66}{100}$ dollars, dated December 4, 1855, signed by said Ruggles W. Clapp, payable to your said orator, Edwin W. McLean, and in said bill particularly described, and secured by a certain mortgage deed from said Ruggles W. Clapp and said Emily Clapp, his wife, to your said orator, as therein set forth, be declared to be still secured by said mortgage, and that said notes might be declared and decreed to be a still subsisting indebtedness and secured by said mortgage; that certain notes and deeds in said bill particularly described and alleged to have been taken by said William E. Ives in pretended exchange for the notes executed by said Ruggles W. Clapp and secured as aforesaid be ordered to be taken back by the person or persons who might be found to be entitled thereto; that an account might be taken of the amount due your said orator, Edwin W. McLean, by reason of the premises, and said mortgage foreclosed according to the course and practice of this court, and that your said orator might have such further or other and different relief as the nature of the case might require and to equity be agreeable, and still further praying for writ of subpœna against said defendants.

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Your orators further represent unto your honors that process was duly issued against said defendants as in said bill prayed, and that said Lot Chadwick, Ruggles W. Clapp, Henry Clapp, and William E. Ives appeared and severally answered the said bill, to each of which answers said Edwin W. McLean put in his replication, and afterwards depositions in said cause were taken by both parties; that the said Edwin W. McLean, on or about the 28th day of February, A. D. 1875, departed this life intestate at Great Barrington, in said State of Massachusetts; that one Charles J. Taylor, of the latter State, was duly appointed by the proper authorities of State of *of* Massachusetts administrator of the estate of said deceased, and that said Taylor, as such administrator, on or about the — day of ——, A. D. 1878, made final settlement and was thereupon discharged and relieved from any further duty and authority as such administrator and the estate of said deceased declared to be fully and finally settled; that said suit and proceedings have become abated by the death of said Edwin W. McLean, and your orators are, as they are advised, entitled, as heirs-at-law of said deceased, to have the said suit and proceedings revived against said

87 defendants and to have said cause restored to the same state and condition it was in previous to his death; that the cause of action set forth in said bill, the notes and mortgage upon which it is based, were in no way affected or disposed of in the administration of said estate, but are now the right and property of your orators, and your orators here renew and repeat the offer made by said deceased in his said bill of complaint, as follows, to wit: "The said notes and deeds so taken by said Ives in exchange as aforesaid your orator always has been and is now ready and willing to surrender and hereby offers to surrender and deliver up the same to whomsoever may be ascertained is entitled to the same and to give proper credits for all moneys received on account thereof," being themselves ready, able, and willing to do and perform all such matters and things as in the judgment of your honors and in view of the premises to equity shall appertain.

And your orators, by way of supplement, further represent that since the commencement of this suit said defendants, Jeremiah Tondrew, Nicholas Schuffelt, John Hinderman, and Conrad Mealhouse, have ceased to occupy any portion of the premises described in said mortgage of Ruggles W. Clapp and wife to said Ed-
88 win W. McLean, and no longer have or claim to have any interest whatever therein, but one William C. Depue is now in possession of a portion of said premises as tenant of said Chadwick or otherwise; that said Emily Clapp has departed this life since the filing of said original bill.

Forasmuch, therefore, as your orators are without remedy in the premises except in a court of equity, and to the end that the said Ruggles W. Clapp, Henry Clapp, William E. Ives, Lot Chadwick, and William C. Dupue, who are made parties defendant to this bill, may each be required to make full and direct answer to the same, but not under oath, their answers under oath being hereby waived; that the said suit may stand revived and be in the same position and condition as it was in at the time of the death of said Edwin W. McLean, and that your orators may have such and further relief in the premises as equity may require and to your honors shall seem meet—

May it please your honors to grant unto your orators the writ of subpœna, directing said Lot Chadwick, Ruggles W. Clapp, William E. Ives, Henry Clapp, and William C. Dupue to appear and answer your orators' bill on the return day thereof, &c.

Dated February 6, 1883.

JULIA H. McLEAN.
WILLIAM B. McLEAN,
By JULIA H. McLEAN,
His Guardian.

89 GEORGE E. McLEAN,
MINNIE R. McLEAN,
By WM. H. HALLISTER, JR.,
Their Att'y.

A. C. BARDWELL, Dixon, Ills.,
P. M. JAMES, Amboy, Ills.,
Sol'rs for Compl't and of Counsel.

Endorsed: Filed Feb. 10, 1883. W. H. Bradley, clerk.

90 Afterwards, to wit, on the twenty-ninth day of March, 1883, came Lot Chadwick, by his solicitors, and filed in said clerk's office his answer to the bill of revivor in said entitled cause; which said answer is in the words and figures following, to wit:

Answer of Lot Chadwick.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

In the Circuit Court. December Term, A. D. 1883.

JULIA H. MCLEAN, GEORGE E. MCLEAN, MINNIE R. MCLEAN, and WILLIAM B. MCLEAN *vs.* LOT CHADWICK, WILLIAM E. IVES, HENRY CLAPP, and Others. } In Chancery. Bill of Revivor.

The separate answer of Lot Chadwick to the bill of complaint filed in the above-entitled cause.

This defendant, now and at all times hereafter saving and reserving all benefit of exception which might be taken to the errors, uncertainties, and imperfections in said bill contained, for answer to such part thereof as he is advised it is material or necessary for him to answer says that he admits it to be true that on the 2nd day of May, A. D. 1872, one Edwin W. McLean exhibited in this honorable court against this defendant and the others named in this bill of revivor his certain bill of complaint setting forth the mat-
91 ters and praying relief substantially as in this bill of revivor it is stated, and that to said bill answers were made by this defendant and his codefendants, Henry Clapp and William E. Ives, and to such answers replications duly filed, and some proofs and depositions were taken, as well on the part of defendants as of complainant therein, and that said Edwin W. McLean departed this life intestate on the 28th day of February, A. D. 1875, and that Charles J. Taylor was duly appointed by the proper authorities of the State of Massachusetts administrator of the estate of said deceased.

But that said Taylor, as such administrator, on or about the — day of ——, A. D. 1878, made final settlement and was thereupon discharged and relieved from any further duty and authority as such administrator and the estate of said deceased declared to be fully and finally settled this defendant says that he is not informed or advised, except by the statements and averments in respect thereto in said bill contained, and he therefore neither admits or denies the same, but leaves said complainants to make such proof thereof as they may be advised — material or necessary.

Further answering, this defendant admits that said original suit abated by the death of said Edwin W. McLean, but defendant denies that said complainants are entitled to have the said suit and proceedings revived against this defendant.

92 And this defendant avers that the causes of action, if any there be, arising to the complainants on account or by reason of the several allegations in their said bill contained did not accrue within sixteen years before the filing of their said bill, and this allegation defendant makes in bar of said complainants' said bill and prays that he may have the same benefit therefrom as if he had formally pleaded the same.

And this defendant further avers that the supposed causes of action, if any there be, in the said original bill stated and set forth arose and accrued to the said Edwin W. McLean in the month of June, A. D. 1861, at which time the said Edwin W. McLean discovered and knew of the several matters and things in his said bill of complaint alleged to have been fraudulent acts and conduct on the part of Ruggles W. Clapp and William E. Ives.

And this defendant further avers that it then became and was the duty of said Edwin W. McLean, within a reasonable time thereafter, to take proper and necessary proceedings to repudiate and set aside the said acts and doings of said Ruggles W. Clapp and William E. Ives and to assert and enforce his supposed rights in and by said bill attempted to be asserted, but notwithstanding his duty in that respect said Edwin W. McLean failed and neglected so to do for an unreasonable length of time thereafter and until the second day of May, A. D. 1872, when said original bill of complaint was filed.

93 And this defendant further avers that, notwithstanding, as in their said bill alleged, said Edwin W. McLean departed this life on the 28th day of February, A. D. 1875, leaving said original bill yet undetermined and pending, at which last-named time, if ever, the supposed causes of action in said original bill mentioned accrued to the complainants herein, and it then became and was their duty to assert and enforce the same within a reasonable time thereafter, nevertheless the said complainants failed and neglected to assert or attempt to enforce the same for an unreasonable length of time and until the 10th day of February, A. D. 1883. Wherefore this defendant now says that the said Edwin W. McLean in his lifetime and the complainants herein since the said death of said Edwin W. McLean have been guilty of such laches in respect to the matters in their said respective bills of complaint complained of that in equity and justice the complainants now ought not to be granted any relief in their said bill or in said original bill prayed for, and this allegation this defendant prays he may be allowed the same benefit of as if he had formally pleaded the same.

And this defendant submits that he has now answered all that it is material or necessary for him to make answer unto in said bill of revivor contained, and that said complainants are not entitled

94 to any relief thereunder; all which he is ready to aver, maintain, and prove as this honorable court may require, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

LOT CHADWICK.

DIXON & BETHEA,
Sol'rs & of Counsel for said Def't.

Endorsed: Filed March 29, '83. Wm. H. Bradley, clerk.

95 Afterwards, to wit, on the twenty-eighth day of April, in the adjourned March term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JULIA H. MCLEAN *et al.*
vs.
LOT CHADWICK *et al.* } In Chancery.

Now come Dixon & Bethea, solicitors for the defendants herein, and suggest the death of the defendant Lot Chadwick; and, on motion of said solicitors, it is ordered that the complainants herein file a bill of revivor against the heirs and legal representatives of said Lot Chadwick, now deceased, within ten days.

Afterwards, to wit, on the third day of May, 1884, came Julia H. McLean *et al.*, by their solicitors, and filed in said clerk's office their bill of revivor in said entitled cause; which said bill of revivor is in the words and figures following, to wit:

96 UNITED STATES OF AMERICA, }
Northern District of Illinois. }

In the Circuit Court of said District.

To the honorable judges of said court, in chancery sitting:

Your orators, Julia H. McLean, of Great Barrington, Massachusetts, widow of Edwin W. McLean, late of the same place, deceased, and George E. McLean, Minnie R. McLean, and William B. McLean, of said State of Massachusetts, children and only heirs-at-law of said deceased (by this their bill of revivor, filed in pursuance of a recent order in this cause), respectfully represent unto your honors that on the — day of ——, A. D. 18—, said deceased exhibited his original bill of complaint in this honorable court against Lot Chadwick, Ruggles W. Clapp, Henry Clapp, William E. Ives, Jeremiah Tondrew, Nicholas Shufelt, John Hindeman, and Conrad Mealhouse, as defendants thereto, stating as therein stated and praying that the notes from said Ruggles W. Clapp to him, therein described, might be declared to be still subsisting indebtedness secured by said mortgage; that the notes and deeds taken by said William E. Ives, as therein set forth, might be ordered taken back by the persons found to be entitled thereto; that an account might be taken of the amount due said complainant, and that said mortgage might be foreclosed to pay the same; that said further or other relief might — said complainant in the premises as the court should deem con-
97 sistent with equity, and that process might be granted him against said defendants.

Your orators further represent unto your honors that said defendants, Ruggles W. Clapp, Lot Chadwick, William E. Ives, and Henry

Clapp, were each duly served with process and appeared, and each put in his answer to said bill, and that witnesses have been examined on both sides, as by the said pleadings and other proceedings in said cause will more fully appear.

That on or about the 25th day of February, A. D. 1875, said Edwin W. McLean departed this life at his —, in said State of Massachusetts, leaving him surviving your oratrix, Julia H. McLean, his widow, and your orators, George E. McLean, Minnie R. McLean, and William B. McLean, his only children and heirs-at-law; that on or about the 3d day of March, A. D. 1875, one Charles J. Taylor was duly appointed administrator of the estate of said deceased by the proper officer in said latter State, and that on or about the — day of ——, A. D. 18—, said administrator was duly discharged and said estate declared settled; that said claim against said defendants was in no manner disposed of in the course of said administration and is now vested in your orators.

That on or about the — day of ——, A. D. 1883, your orators, by leave of your honors, filed their bill in this court, reviving said cause in their names and behalf as complainants.

That on or about the 30th day of August, A. D. 1883, said defendant, Lot Chadwick, departed this life, as set forth in the suggestion of Abigail L. Haskell, filed in this cause, leaving him surviving Sarah L. Chadwick, his widow, and Charles W. Chadwick, Sarah A. Clapp, Jane Welch, Martha L. Crombie, Mary A. Chadwick, and said Abigail L. Haskell, his children and heirs, and that said Abigail L. Haskell has been duly appointed and is acting as administratrix of the estate of said deceased.

98

That by the death of the said defendant whatever title or interest in or to the real estate in said mortgage he, said defendant, was seized of at his decease became vested in his said widow and children as his heirs-at-law, and that as such heirs they each have or claim to have some title or interest in said real estate; and the said suit and proceedings having, as to the interests of said deceased, become abated by his death, your orators are advised that they are entitled to have the same revived against his said widow and heirs.

Forasmuch, therefore, as your orators are without remedy in the premises except in a court of equity, and to the end that the said Sarah L. Chadwick, Charles W. Chadwick, Sarah A. Clapp, Jane Welch, Martha L. Crombie, Mary A. Chadwick, and Abigail L. Haskell, who are made parties defendant to this bill, may be required to make full and direct answers to the same (but not under oath, their oaths to their answers being hereby waived); that the said suit and proceedings may stand and be revived against said defendants and be in the same plight and condition as the same were in at the time of the abatement thereof, and that your orators may have the benefit thereof, and that your orators may have such other and further relief in the premises as equity may require and to your honors shall seem meet.

99

May it please your honors to grant the writ of summons in chancery, directed to the proper officer, commanding him that he summon the said Sarah L. Chadwick, Charles W. Chadwick, Sarah A.

Clapp, Jane Welch, Martha L. Crombie, Mary A. Chadwick, and Abigail L. Haskell to appear before the said court on the first day of the next term thereof, then and there to answer this bill.

JULIA H. McLEAN,
GEORGE E. McLEAN,
MINNIE R. McLEAN,
WILLIAM B. McLEAN,
By A. C. BARDWELL,
Their Att'y.

A. C. BARDWELL,
Sol. for Compl'ts.

Endorsed: Filed May 3, 1884. W. H. Bradley, cl'k.

Afterwards, to wit, on the twelfth day of November, 1886, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

100 United States Circuit Court, Northern District of Illinois.

JULIA H. McLEAN *et al.*
v.
LOT CHADWICK *et al.*

It is hereby stipulated and agreed by and between the parties to the above suit as follows, to wit:

That all depositions taken in said cause and on file may be opened by the clerk on request of the solicitor of either party.

That Charles J. Taylor, administrator of the estate of Edwin W. McLean, deceased, original complainant in said cause, be substituted as complainant in the place and stead of the heirs of said deceased.

That counsel for defendant Lot Chadwick hereby enter their appearance as solicitors for Abigail L. Haskell, administratrix of the estate of said Lot Chadwick, deceased, and that the bill of revivor heretofore filed by complainants stand as a bill of revivor against said administratrix to all intents and purposes as if she were defendant to said bill by revivor, and that the answer of said Lot Chadwick to said last-mentioned bill be treated in all respects as the answer of said administratrix.

That the evidence taken by Dwight Heaton, Esq., as examiner under order of said court entered Feb'y 1st, 1873, may be reported by J. F. Sanford, Esq., and that the testimony taken and to be
101 taken by said Sanford (as examiner, substituted by agreement of the parties to said cause, to take said testimony in the place and stead of said Heaton after his death) be reported by said Sanford to all intents and purposes as if he were the examiner named in said rule or order of Feb'y 1st, 1873.

That the court may set this cause for hearing on the sixth (6th) day of October next, or as soon thereafter as the court sees fit.

A. C. BARDWELL,
Sol. for Complainants.
S. H. BETHEA,
Sol. for Def'd't.

Endorsed: Filed Nov. 12, 1886. Wm. H. Bradley, clerk.

102 Afterwards, to wit, on the seventeenth day of March, in the adjourned March term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

EDWIN W. McLEAN
vs.
LOT CHADWICK *et al.* } In Chancery.

Now come the parties, by their solicitors, and this cause being set for hearing this day now comes on to be heard upon the pleadings and proofs herein, and after hearing the arguments of counsel in part the court orders that further hearing herein be postponed until to-morrow morning.

Afterwards, to wit, on the eighteenth day of March, in the adjourned March term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

EDWIN W. McLEAN
vs.
LOT CHADWICK *et al.* }

103 Now again come the parties, by their solicitors, and this cause again comes on to be heard upon the pleadings and proofs, and after hearing further arguments of counsel, and the same not being concluded, it is ordered that the further hearing of this cause be postponed until to-morrow morning.

Afterwards, to wit, on the nineteenth day of March, in the adjourned March term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

JULIA H. McLEAN
vs.
LOT CHADWICK *et al.* } In Chancery. Bill of Revivor.

Now again come the parties, by their solicitors, and this cause again comes on to be heard upon the pleadings and proofs, and after hearing the concluding arguments of counsel the court takes the same under advisement.

104 To wit, on the fourth day of April, in the adjourned March term of said court, 1887, in the record of the proceedings

thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Decree.

JULIA H. MCLEAN, GEORGE E. MCLEAN, MINNIE R. MCLEAN, and WILLIAM B. MCLEAN
vs.
SARAH L. CHADWICK *et al.*
} In Chancery.

Now again come the parties herein, and the court, having considered and being fully advised upon the matters submitted herein upon pleadings and proofs, finds the equities with the defendants. It is thereupon ordered that the bill herein be dismissed for want of equity at complainants' costs, and that execution issue.

105 Afterwards, to wit, on the second day of May, in the adjourned May term of said court, 1887, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

JULIA H. MCLEAN *et al.*
vs.
SARAH L. CHADWICK *et al.*
} In Chancery.

Now come the complainants, by A. C. Bardwell, Esq., their solicitor, and pray an appeal to the Supreme Court of the United States from the decree of dismissal entered herein on the fourth day of April last, which is allowed on the filing of a bond by them in the penal sum of five hundred dollars within sixty days from said fourth day of April, with surety to be approved by the clerk.

106 United States Circuit Court, Northern District of Illinois.

COMMONWEALTH OF MASSACHUSETTS,
County of Berkshire.

GREAT BARRINGTON, *May 26th*, 1873.

And now EDWIN W. MCLEAN, the deponent named in the annexed commission, having appeared before me, Justen Dewey, Jr., the commissioner named therein, and having been by me duly sworn, upon his oath made answer to the interrogatories and cross-interrogatories hereto annexed as follows:

1st Int. What is your name, age, occupation, and place of residence?

A. My name is Edwin W. McLean; my age is fifty-one years; my occupation is merchant; and my residence, Great Barrington, Berkshire county, Massachusetts.

2 Q. Do you know the parties to this suit, or either and which of them, and how long have you known them respectively?

A. I know Henry Clapp, William E. Ives, Ruggles W. Clapp, and Emily Clapp, and have known them ever since A. D. 1855.

3 Q. Where did you reside and what was your business in the year 1855, and how long have you resided out of the State of Illinois?

A. I resided in Amboy, in the State of Illinois, in the fall of
107 A. D. 1855, and my business was a merchant, and I have resided out of the State of Illinois since December, A. D. 1855.

4 Q. Did you have any business transactions with Ruggles W. Clapp in the year 1855? And, if so, state what they were, and if those transactions resulted in indebtedness from Clapp to you state the amount and how it was evidenced and secured, if at all, and annex to your deposition any documents you have which were then delivered, and if you have not all the documents which were then passed state what became of them and give their contents as nearly as you can.

A. I sold a stock of goods to Ruggles W. Clapp in December, A. D. 1855, consisting of dry goods, crockery, hardware, &c., situated in east store in Exchange block, Gillson's Addition to Amboy. The sale was for five thousand nine hundred and eighteen dollars and sixty-six cents ($5,918.66), for which he gave his notes secured by mortgage, which mortgage is hereto annexed and marked A, and bears date December 4, 1855. The notes secured by said mortgage, four in number, were given by me to William E. Ives, one of the defendants, and took receipts of said Ives for three of said notes, which receipts are hereto annexed, marked, respectively, Receipt A, Receipt B, and Receipt C, and correct copies of said three notes, are contained in said receipts. The fourth of said notes, which
108 was for the sum of five hundred dollars, has been paid.

5 Q. If, in answer to the last interrogatory, you state that you took promissory notes from R. W. Clapp, state what and how many of them were paid, through whom any collections were made, and give a history of the transaction up to the time of the giving up of the notes. If, in answer to the question, you refer to any writing or letter, annex the same to your deposition or account for its absence, describing it by its date and otherwise.

A. The first note of five hundred dollars was paid in July, A. D. 1856. This note was collected by William E. Ives, one of def'ts. The other three notes were left with said Ives for collection and his receipts taken therefor, as stated in my last preceding answer. The notes were put in the hands of said Ives for collection in the years A. D. 1856 and 1857 and before their maturity.

6 Q. State whether or not you ever executed and delivered a release of the mortgage given you by Clapp to secure the notes.

A. I have not executed or delivered any release of said mortgages.

7th Q. Give an account of your connection with the defendant William E. Ives, stating in general terms the business transactions you have had with him relating to the subject in controversy
109 in this suit and the relations you sustained to each other, and annex to your deposition any letters or other writings you may have throwing light upon your relations to each other.

A. I left the notes and mortgage aforesaid with said Ives for col-

lection when due. The said notes were not paid when due. I received from time to time from said Ives letters in relation to said notes and the collection of them. In July, A. D. 1857, said Ives wrote me that said Clapp wanted to pay two thousand dollars in cash towards and upon said notes and turn out other securities for the balance. Said letters, under date of July 10, 1857, and other letters above referred to are hereto annexed.

8 Q. State fully, so far as you know them of your own knowledge, the circumstances attending the surrender of the notes, giving a complete account of the whole transaction, and follow the directions contained in the fifth interrogatory if you give the contents of any writing or letter.

A. In August, A. D. 1857, I went to said Amboy to see about the collection of the said notes and found that said Clapp had not paid as he had agreed to. I saw said Clapp, and he then promised to pay one thousand dollars in a few days if I would take other
110 securities that were good for the balance of the debt. I told him I was anxious to have my pay, but made no arrangement with him about any exchange of securities or notes, but left the matter with said William E. Ives, saying to him that if said Clapp paid the one thousand dollars in cash he could exchange the remaining notes, provided that Clapp gave him good notes, well secured, for the balance of the indebtedness. I said to said Ives to examine the notes and securities and not to take any securities or notes that were not secured beyond doubt, as the security I had was good; that I would not exchange unless I got as good security and the one thousand dollars in cash. I returned home and left the matter with Mr. Ives to arrange, as above described. The matter ran along until December, A. D. 1857, when Mr. Ives sent me said R. W. Clap's draft on his (Clapp's) brother, in New York city, for one thousand dollars, payable in sixty days, and wrote me at the same time that he should make no exchange of securities until the said draft was paid. Said draft became due and was protested for non-payment. I wrote Mr. Ives after I received said draft and before its maturity several times not to make any exchange of securities until
111 the draft was paid, and then to be sure the securities were good. I cautioned him strongly upon that point in every letter. Contrary to my instructions Mr. Ives exchanged notes or securities with said Clapp and wrote me that he had exchanged the notes and that all the notes he had taken were good notes, well secured, and sure to be paid when due. Said notes were exchanged or surrendered to said Clapp.

9 Q. Have you seen Mr. Ives since the surrender of the notes? If so, give the conversation you have had with him in reference to this matter, and particularly any statements of his as to his following your instructions or otherwise in making the surrender.

A. I saw said Ives in June, A. D. 1861, after he had made the exchange or surrender above referred to. Having gone to said Amboy for the purpose of seeing said Ives about the matter, I had conversation with him then on the subject. He was not disposed to say much about it, but admitted to me that he had no right to make the

exchange or surrender until said draft of one thousand dollars was paid. I then asked him to let me see the notes and securities he had taken in exchange for those I had left with him, and he did so.

112 10th Q. Give the substance of the conversation you have had — R. W. Clapp since the first notes were given, stating particularly the extent of your own negotiations with him in regard to a surrender of securities and how far the particulars of the matter were discussed by you and R. W. Clapp.

A. I had some conversation with R. W. Clapp in August, 1857, as stated in my answer to the eight interrogatory, but I did not discuss with him the particulars of the matter at all, nor was any reference made by him to any securities he proposed to exchange, nor did I make any arrangement with said Clapp for an exchange or surrender of said notes, but said to him I was anxious to have my pay.

11 Q. If, in answer to any former interrogatory, you have said that a change of securities was made, what did you receive in exchange for those which were surrendered?

A. I received in exchange for the securities surrendered four notes, bearing date of November 29, 1856, and amounting in all to thirty-nine hundred dollars, signed by Cyrus Craig and payable to the order of R. W. Clapp and by him endorsed, and three notes each for the sum of four hundred and thirty-three dollars and thirty-three cents, bearing date of August 1, 1857, signed by Curtis Cameron and payable to the order of said R. W. Clapp and by him indorsed.

113 12th Q. What knowledge had you at the time of the exchange of the value of the securities you received? State all you then knew about the character of the persons whose obligations were taken and the value of the securities, condition of title, &c., and the source of your information.

A. I had no knowledge at the time of the exchange of the value of the securities received except what Mr. Ives wrote me. When he wrote me that he had exchanged the notes he wrote that the notes he had taken in exchange were good notes and well secured and sure to be paid when due. I knew nothing of the makers of said notes received or of the titles except what Ives wrote me.

13 Q. Why did you not make a personal and minute examination into these matters?

A. I was in the State of Massachusetts when the exchange was made and — no chance to make any personal examination, and relied on Mr. Ives to follow my instructions and protect my interest, having left the matter in his hands.

14 Q. Who has charge of your business in Lee county, and how long has he been your agent in this matter?

A. Martin L. Arnold; since June, A. D. 1861.

15 Q. When did you discover the character of the securities you received?

114 A. In June, 1861, I was in Amboy, and then first saw the securities Ives had taken, and after making inquiries in relation to them at that time it appeared to me that the securities

taken by him were not good and that he must have been aware that they were not.

16 Q. What have you known of the whereabouth of R. W. Clapp since you made the discovery and what steps have you taken to repudiate the transaction by which a change of securities was made so far as you have personally acted in the matter?

A. I have not known of the whereabouts of R. W. Clapp since June, 1861, except by hearsay, and in June, 1861, after making inquiries about the securities taken by Ives I discharged him, demanded and received my papers which were in his hands and placed them in the hands of said Arnold to make investigations, and told him that if he found that they were not good to inform R. W. Clapp I would hold on the original mortgage and to deliver to said Clapp the securities taken by Ives.

17 Q. Who has the securities you took in exchange and how long has he had them?

A. Said Arnold; since July, 1861.

18 Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the sub-
115 ject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. Not long after said Ives sent me Clapp'- draft as aforesaid he sent me his own deed of marked lot No. 5, B. 11th, in said Amboy, to secure the draft. Said lot was then encumbered by a trust deed to one Welty to the amount of four hundred dollars. Said deed was sent in A. D. 1860.

In August 21, 1856, I find I received from said Ives on account of said Clapp's indebtedness the sum of two hundred and forty-five $\frac{84}{100}$ dollars in addition to five hundred dollars above spoken of. At the time said Ives exchanged or surrendered the notes with said Clapp he also took as collateral some notes given by one Jones, which were worthless. Said notes are now in the hands of said Arnold.

116 Cross-examination:

1 X Q. When, if ever, did you cease to be engaged in the business which you were carrying on in 1855? What business have you been engaged in during the last ten years? Have you been engaged in said business continuously during all of said ten years; if not, for what length of time were you out of said business and for what reason?

A. I stopped doing business in Amboy December, 1855. In March, 1856, I entered on the mercantile business in Great Barrington. During the last ten years I have been engaged continuously in the mercantile business in this place.

2 X Q. State whether, in your answer to the fifth interrogatory, you have confined yourself to matters which have been within your own knowledge or have you stated anything only upon information. If the latter has been the character of said answer, please

state now how much of said answer is predicated upon your own personal knowledge of the alleged facts, and state how that knowledge was obtained.

A. In my answer to the fifth direct interrogatory I have confined myself to matters within my own knowledge, having myself taken part in the transactions there referred to.

117 3 X Q. If, in answer to the seventh direct interrogatory, you state that the relation of attorney and client ever existed between William E. Ives and yourself, state how said relation was created and when and where; state also whether you ever paid the said Ives any retaining fee and whether you have ever paid or admitted your liability to pay him any fees whatever for any services in relation to any business between you and Ruggles W. Clapp. If you state that you paid any fee whatever to him, state when and where you did so; and if, in answer to said interrogatory, you — any letter or other writings as called for therein, state whether you have produced all letters or writings between you and the said Ives in relation to the said business.

A. The relation of attorney & client between myself and said Ives was created in December, 1855, by leaving with him for collection the first note of said Clapp described in said mortgage. This was done by me at said Amboy, and I then agreed with him to send him the remaining notes for collection before their maturity, and did so. I never paid said Ives any retaining fee, but he was to take out his commissions for collection when the notes were collected, and did so as far as he made any collections. I have never

118 admitted nor denied otherwise than as herein stated my liability to pay said Ives fees for services in relation to business between me and said R. W. Clapp. I have produced all letters between said Ives and myself touching said business that are now in my possession. Some are in the hands of my attorney, Mr. Arnold, and some have been lost or mislaid, and I cannot now produce them.

4 X Q. State fully all the means by which you acquired any knowledge as to the matters inquired about in the eighth direct interrogatory.

A. My means of knowledge were conversations with said Clapp and Ives in August, 1857, and letters received from said Ives, which are annexed to my deposition.

5 X Q. Have you any personal knowledge as to any of the matters testified to by you in answer to said eighth direct interrogatory? If so, when and where and how did you obtain any such knowledge as to any one thing and as to all the things stated by you in said answer?

A. From personal conversations at said Amboy and from letters of said Ives, as stated in said answer.

6 X Q. When and where did the conversations referred to in the ninth direct interrogatory take place and who was present

119 thereat? Have you stated the whole of said conversation? If not, now do so.

A. It was at the office of said Ives, in Amboy, and I think no one but Mr. Ives and myself was present thereat. I cannot give the

conversation in detail, but I remember that I told Mr. Ives I was dissatisfied with what he had done. I should have the matter investigated. Ives claimed that the notes taken by him were good.

7 X Q. If, in answer to the tenth direct interrogatory, you have stated that you had any such conversation with R. W. Clapp, state when and where such conversation took place; tell in what room or other place it occurred and who was present thereat, and state fully the whole of said conversation. State, sir, whether you ever made any note or memorandum as to what was said in said conversation, and, if you did, produce the same and have it attached to your deposition and state when and where you made such note or memorandum.

A. Cannot state where said conversation took place certainly, but I think at Mr. Clapp's house, but I cannot tell in what room. I do not remember that any one was present. Said Clapp then promised to pay me one thousand dollars in a few days if I would take
120 other notes well secured for the balance, but did not specify the notes. I told Clapp that if he paid the thousand dollars, as he promised, I would take good, well-secured notes for the balance, and I said to him that I should leave the matter with Mr. Ives to arrange. I never made any note or memorandum of said conversation.

8 X Q. State fully all the means which you have ever taken to ascertain the whereabouts of said R. W. Clapp since you say you were informed of the alleged change of securities; state their means in detail and tell each one — was used.

A. I never made any personal effort to ascertain the whereabouts of said Clapp, but left the business with M. L. Arnold to make inquiries and investigations—to act for me.

9 X Q. If you state that you have taken any steps to repudiate the transactions by which such alleged change of securities to- place, state now when the first and all the other steps were taken, giving the date and description of each.

A. I took steps to repudiate said transactions in June, 1861, through M. L. Arnold, as stated in my answer to the sixteenth direct interrogatory. I took no other steps myself than as therein stated.

10 X Q. Were you in Amboy, Lee county, Illinois, in the
121 summer of A. D. 1857? If yea, how long did you remain there and how many interviews, if any, did you then and there have with the said R. W. Clapp?

A. I was, in the summer of 1857. I remained two or three days. I cannot say how many interviews I had with said Clapp.

11 X Q. Did William E. Ives ever execute and deliver to you more than one deed from himself of real estate in the said county of Lee? Give the date of every deed which he ever executed to you of land in said county.

A. I have no knowledge of any other deed from said —— —— to me than the one referred to in my answer to the 18th direct interrogatory.

12 X Q. Were you in Amboy, Lee county, Illinois, in the year

A. D. 1862? If yea, at what time in said year and how long did you remain there?

A. No.

13 X Q. About how many times did you see Ruggles W. Clapp in the year 1860 and how many times in 1861 and how many times in 1862? Where were you doing business in those years and where was said Clapp doing business in those years?

A. I did not see said Clapp in 1860, 1861, or 1862 as I re-
122 member. I was doing business in those years in Great Barrington, Massachusetts, but I do not know where said Clapp was then doing business.

14 X Q. How much money did you ever collect upon any of the notes or securities said to have been taken in exchange for the said Clapp notes; of whom did you receive any such money, and when?

A. My agent, Mr. Arnold, collected on the Craig securities about eight hundred and fifty dollars and remitted the same to me in the years 1866, 1867, & 1868, less some taxes which he paid.

15 X Q. Have you ever sold any of the lands received at the time of the said alleged change of securities or as a result of said change? If so, when and to whom? And if in more than one instance state how many.

A. My agent, Mr. Arnold, sold and sent me a deed to execute of the interest I received by the Craig property to me; Hitchcock.

16 X Q. When, how often, and to what amount have you or any one for you received rents for any part of the lands so received on exchange of securities or in payment of any of the said Clapp indebtedness?

A. I have received no rents except what my agent, Mr. Arnold, has received. I cannot state the times or the amounts.

17 X Q. Have you ever made an assignment in bankruptcy? If yea, when and to whom? Have you ever filed a petition in
123 bankruptcy, or has there ever been a petition in bankruptcy filed against you? If either, when?

A. No; I have never filed nor has there been filed against me a petition in bankruptcy.

EDWIN W. McLEAN.

124 AMBOY, *Dec.* 10*th*, 1856.

DEAR SIR: Yours of 27th ult. was received this morning. I am sorry to say that Clapp has paid nothing on your claims yet. He still promises to pay, and tells me now that he will certainly pay by the 1st of Jan'y. I do think he will pay by that time. Clapp is making money here and no mistake. I think he has made at least ten thousand dollars this year, so I know he could have paid you if he had been a mind to, but instead of doing so he would lay out his money for other purposes. I have not the least doubt but that you will get the whole of your money when the last note becomes due, for he knows that if he does not pay then the mortgage will be foreclosed without delay. Nothing shall be left undone on my part that I can do to get the money that is now due

you at the earliest possible moment, but you know that I cannot do anything now but to appeal to his honor as a man to pay.

Hoping that I shall be able to send you by the first of Jan'y what will then be your due, I remain,

Yours truly, W. E. IVES.

125 AMBOY, *Feb.* 21, 1857.

Mr. E. W. McLean.

DEAR SIR: Yours of the 7th inst. came duly to hand, and in reply will say that I have tried every means possible to get the money from him except suing. He has promised me time and time again, but always fails to fulfill them. Now, if you wish me to put the matter in suit, I will make the money for you as soon as the law will allow me. I think I shall have to make some effort of this kind before you will be able to get your money. I await your reply.

Yours truly, W. E. IVES.

126 AMBOY, *March 26th*, 1857.

Mr. E. W. McLean.

DEAR SIR: Yours of the 19th came duly to hand, contents noted. In reply, will say that, after mature reflection, I have and do think it best, as the last note becomes due in May, to dismiss the suits and foreclose the mortgage, as that will settle the whole affair. We have now a June term of our circuit court, at which I will bring suit to foreclose the mortgage. The property secured by said mortgage is ample and sufficient to pay all the claims. The reason I have concluded to take this course is, first, the whole can be settled at once, and, second, we have now a June term of court, so that the mortgage can be immediately closed after becoming due, and, thirdly, the money can be obtained on this foreclosure of the mortgage as soon as could be by taking judgment on the notes at this term, which would be in one year after the mortgage is foreclosed. The money will draw ten per cent. interest until paid; then I may possible get the money on the first note before foreclosing. I know it is unpleasant for you to wait so long for your just dues after placing the confidence you did in the promptness of the man and relying upon his promises, but your claim draws ten per cent., and, as I said before, well secured.

Yours truly, W. E. IVES,
Per E. J. M.

127 AMBOY, *May* 5, 1857.

Mr. E. W. McLean.

DEAR SIR: Yours of the 23d of April came duly to hand, and, in reply, will say I rec'd note of $2,209.33 enclosed. Clapp has paid nothing yet on those notes, as we had hoped he would have paid. The best we can take is to foreclose the mortgage immediately, and I will endeavor to make the money for you as the law will permit. The security is good and you are getting ten per cent. int. and must be patient as you possibly can. The money must come and the

interest thereon in the end. I shall need the mortgage—the copy will not answer—if the original can be obtained. Enclosed please find a receipt for the note.

Resp'y yours,

W. E. IVES,
Per J. J.

128 AMBOY, *May* 19, 1857.

Mr. E. W. McLean.

DEAR SIR: Yours of May 10th came duly to hand, and, in reply, will say that I enclose herewith a copy of your mortgage, and also the receipt for your note signed in due form. I will make an effort to get some of the money, but think it will be very doubtful whether I succeed. The special term of our court was dispensed with, which was to come off in May. It will now be held the 3d Monday in June, which is near at hand, at which time I will foreclose the mortgage, after which time he (Clapp) will have one year to redeem in. I will see to it that no delay in the premises is made, as it has gone a long time now; but the money I will make as soon as the law will allow me, and sooner if I can settle it with him at a reasonable rate. In the meantime I remain,

Yours truly,

W. E. IVES,
Per E. J. IVES.

129 W. E. Ives & Bro., real-estate brokers and general insurance agents.

AMBOY, ILL., *July* 10*th*, 1857.

Mr. E. W. McLean.

DEAR SIR: Yours of the 6th inst. is at hand; in reply will say that I brought suit against Clapp to foreclose mortgage at our last term of court, which has just closed. Mr. Clapp employed attorneys to defend and pleaded usury, by which plea, according to the laws of our State, he would, if the plea is sustained, get a deduction from the amount your due of about one thousand dollars. I called on Clapp and a*k*sed him what he meant by taking such a course after so many fair promises on his part to settle the matter up, and he said that he was willing to pay the full amount, but if I was determined to foreclose the mortgage he should take all the advantage he possibly could. I have business in Boston and shall have to be there some time next week, and I will call and see you in relation to this matter, also in relation to the receipt of which you speak, at which time I can tell you more particularly in regard to the matter. Clapp tells me now that he will pay two thousand dollars cash on those notes, provided you will take good secured notes drawing ten per cent. interest for the balance. I shall probably see you next week.

Respectfully yours,

W. E. IVES.

130 W. E. Ives & Bro., real-estate brokers & general insurance agents.

AMBOY, ILL., *July* 28, 1857.

Mr. E. W. McLean.

DEAR SIR: I arrived home safely on Saturday last. I saw Mr. Clapp this morning. He says he is anxious to see you, but his business is such that he must start for the South this evening, and will be in New York in about ten days. He tells me that he would like to meet you there, and if — cannot he will come up to your place. He says that he wants to get the matter off from his hands. I do not think it will be safe to come out here, for you will not probably see him until after he returns from New York. If you do not see him I will write you immediately on his return from New York, or if he returns from the South without going there I will write you. He tells me, as he has before, that he will pay the money spoken of, and will give you notes well secured for the balance.

Please let me hear from — by return mail.

Respectfully yours,

W. E. IVES,
Per J. I.

131 W. E. Ives & Bro., real-estate brokers & general insurance agents.

AMBOY, ILL., *Sept.* 15*th*, 1857.

Mr. E. W. McLean.

DEAR SIR: Yours of the 9th inst. was received this morning; contents noticed. In reply will say that I called on Mr. Clapp immediately on his return from New York and learned from him that he had not paid you as he agreed to. He gives me as a reason that he did not get this money, but made arrangements by which he was to receive, he says, "five thousand dollars" within ten days after his return, and now tells me that as soon as he gets that money, which he thinks will be this week, he will pay the one thousand dollars and deliver over those other papers as per agreement.

You will hear from me again in a few days.

Resp'y yours,

W. E. IVES,
P'r BRO.

132 AMBOY, *July* 19, 1858.

Mr. E. W. McLean.

DEAR SIR: Yours of June 22d and July 14 were received in due course of mail. Absence from home is our excuse for not writing sooner. Mr. Clapp has not paid me the 1,000 dollars to apply on that check nor has he notified me that he has sent you the money. Mr. Clapp says that he shall be in N. Y. this week. Can you not meet him there? Times are exceedingly hard in this place; money is difficult to be obtained at any rate of interest.

In regard to my advancing the money on the 1,000-dollar draft and take the security which Clapp gave to secure payment of it, I would gladly do so if I could raise the money for you. I will take

it and pay you 15 per cent. on the draft until I raise the money for you. The notes which were taken in exchange are as follows, to wit:

1 note, date Nov. 29, 1856, due	2	years			$500	00
1 " " "	3	"			1,000	00
1 " " "	4	"			1,000	00
1 " " "	5	"			1,400	00

Each of the above notes are payable to R. W. Clapp and by him endorsed to you and signed by Cyrus Craig, with interest at ten per cent.

Also—

1 note, date August 1st, 1857, due	1	year			433	33
1 " " "	2	"			433	33
1 " " "	3	"			433	33

133 Each of said notes bear interest at ten per cent., signed Curtis Cannon, payable to R. W. Clapp, and by him endorsed to you.

I hope you will see Clapp in N. Y. and make that matter all right.

Respectfully yours, W. E. IVES.

134 AMBOY, *Sept. 28th*, 1858.

Mr. E. W. McLean.

DEAR SIR: Yours of the 18th Sept. came duly to hand; contents noticed. Mr. R. W. Clapp returned from N. Y. about ten days ago. I called upon him immediately; showed him the letter of his bro.'s; also the check. He said he would pay it in a day or two, and I have been waiting from day to day expecting it. He tells me to-day that he has been disappointed in getting his money from N. Y.; that it did not come according to agreement; that he is to start to-night for N. Y.; that he is sure to get at least $20,000 *dollars* as soon as he gets there; that he will immediately on arriving at N. Y. send you the money for the check. I do hope he will do so and close up that matter. I have not collected anything on those other notes yet; shall have to sue unless paid before the next term of our court, which comes off on 2 Monday of Nov.

Yours truly, W. E. IVES.

135 AMBOY, *Ja'y 21st*, 1861.

Mr. E. W. McLain.

DEAR SIR: Yours of — came to hand in my absence.

In reply I would say that I have not collected anything on the notes in my hands. You will have to pay $800 *dollars* interest on the same by the 15th of May next to redeem the land sold, to wit, 160 acres of land, in order to secure the notes which you hold against Craige, endorsed to you by Clapp, and you will either get the land or the am't of the notes. Clapp sold the — to Craige for, I think, over $5,000 *dollars*, on which Craige paid $1,100, and all the other

notes were assigned to you. The farm is a good one and worth saving. I do not know what it would sell for now. You can get possession of the farm as soon as it is redeemed from the mortgage.

Respectfully yours, W. E. IVES.

136 12. AMBOY, *Nov.* 23, 1857.

Rec'd of E. W. McLean the following note for collection, to wit:

Copy.

$1,000.00. AMBOY, *Dec. 4th*, 1855.

Five months after date I promise to pay to the order of Edwin W. McLean one thousand dollars, value received, with interest at ten per cent.

(Signed) R. W. CLAPP.
W. E. IVES,
Att'y-at-Law, Amboy
P'r BRO.

Rec'pt A.

13. AMBOY, *Dec.* 23*d*, 1857.

Rec'd of E. W. McLean for collection the following note, to wit:

Copy.

$2,209.33. Seventeen months after date I promise to pay to the order of Edwin W. McLean two thousand two hundred and nine $\frac{33}{100}$ dollars, value received, with interest at ten per cent.

(Signed) R. W. CLAPP.
W. E. IVES,
Att'y-at-Law, Amboy, Ill.,
P'r BRO.

Rec'pt B.

137 14. AMBOY, *Nov.* 23*d*, 1857.

Rec'd of E. W. McLean the following note for collection, to wit:

Copy.

$2,209.33. AMBOY, *Dec. 4th*, 1855.

Eleven months after date I promise to pay to the order of Edwin W. McLean two thousand two hundred nine and $\frac{33}{100}$ dollars, value received, with interest at ten per cent.

(Signed) R. W. CLAPP.
W. E. IVES,
Att'y-at-Law, Amboy,
P'r BRO.

Receipt C.

138 This indenture, made this fourth day of December, in the year of our Lord one thousand eight hundred and fifty-five, between Ruggles W. Clapp and Emily Clapp, of the county of Lee and State of Illinois, party of the first part, and Edwin W. McLean, of the same place, party of the second part.

Whereas the said party of the first part is justly indebted to the said party of the second part in the sum of five thousand nine hundred eighteen $\frac{66}{100}$ dollars, secured to be paid by four certain promissory notes bearing even date herewith, as follows, to wit: Five hundred dollars twenty-five days from the date hereof, with ten per cent. interest; and one thousand dollars five months from the date hereof, with interest at ten per cent.; and two thousand two hundred nine $\frac{33}{100}$ dollars eleven months from the date hereof, with interest at ten per cent.; and two thousand two hundred nine $\frac{33}{100}$ dollars seventeen months from the date hereof, with interest at ten per cent. per annum:

Now, therefore, this indenture witnesseth: That the said party of the first part, for the better securing the payment of the money aforesaid, with interest thereon, according to the tenor and effect of the said promissory notes above mentioned, and also in consideration of the further sum of one dollar to them in hand paid by the said party of the second part at the delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bar-
139 gained, sold, conveyed, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns forever, all the following-described real estate situate in the county of Lee and State of Illinois, to wit: The northeast quarter of section No. thirty-three (33), in township No. twenty-one (21) north of range No. eleven (11) east of the fourth principal meridian, and containing, according to the Government survey, one hundred and sixty acres of land, be the same more or less; also of the following-described lands situate in the same county and State, to wit: The undivided half of the east half of the northwest quarter of section No. thirty-three (33), and of the east half of the southwest quarter of section No. twenty-eight (28), all of town. numbered twenty-one (21) north of range numbered eleven (11) east of the fourth principal meridian.

Also the northwest quarter of the southwest quarter and the west half of the northwest quarter of section numbered thirty-four (34), and the northeast quarter of the southeast quarter of section numbered thirty-three (33), in town. numbered twenty-one (21) north of range numbered (11) eleven east of the fourth principal meridian, and containing one hundred and sixty acres of land (160), according to the Government survey, be the same more or less; also of the following-described lands situate in the same county and State, to wit: The undivided half of the east half of the northwest
140 quarter of section No. thirty-three (33), and of the east half of the southwest quarter of section No. twenty-eight (28) and town. No. twenty-one (21), in range No. eleven (11) east of the fourth principal meridian:

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging or in anywise appertaining, and also all the estate, interest, and claim whatsoever, in law as well as in equity, which the party of the first part have in and to the premises hereby conveyed, unto the said party of the second part, his heirs and assigns, and to their only proper use, benefit, and behoof:

Provided always, and these presents are upon this express condition, that if the said party of the first part, their heirs, executors, or administrators, shall well and truly pay or cause to be paid to the said party of the second part, his heirs, executors, or administrators or assigns, the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above-mentioned promissory notes according to the true intent and meaning thereof, that then and in that case these presents and everything herein expressed shall be absolutely null and void.

In witness whereof that said party of the first part hereunto set their hands and seals the day and year first above written.

RUGGLES W. CLAPP. [SEAL.]
EMILY CLAPP. [SEAL.]

Sealed and delivered in presence of—
W. E. IVES.

141 STATE OF ILLINOIS, } ss:
County of Lee, }

William E. Ives, notary public in and for the said county, in the State aforesaid, do hereby certify that Ruggles W. Clapp, who is personally known to me as the real person whose name is subscribed to the mortgage — as his free and voluntary act for the uses and purposes therein set forth, and the said Emily Clapp, wife of the said Ruggles W. Clapp, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said mortgage having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this 4th day of December, A. D. 1855.

WILLIAM E. IVES,
[SEAL.] *Notary Public.*

Endorsed: A. State of Illinois, Lee county. Filed for record Dec. 6th, 1855, and recorded in Book E of Mortgages, pages 346 & '7 & '8. J. S. Boardman, recorder. Filed June 23, 1873. Wm. H. Bradley, clerk.

142 *Testimony Taken before Philip A. Hoyne, a United States Commissioner, on the 22d Day of October, 1873, at Chicago, Illinois.*

And the said ENOS J. IVES, being about the age of forty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Enos J. Ives, and he did thereupon depose, testify, and say as follows, viz:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Enos J. Ives; my age is forty-three years; I reside in the city of Chicago, county of Cook and State of Illinois; am a commission merchant.

Int. 2. Were you acquainted with certain premises in the city of Amboy, Lee county, Ill., in which one Ruggles W. Clapp formerly resided?

A. Yes.

Int. 3. Do you know the numbers of the lost blocks?

Ans. I cannot give them from recollection; could designate them on a map.

Int. 4. About what time did the said Clapp cease to reside on the said premises, and who went into the occupation after him?

Ans. I think about the year 1858, and William E. Ives went into occupation after he left.

Int. 5. Do you know who occupied after Ives?

Ans. J. S. Briggs.

143 Int. 6. Do you know whether said Ives purchased said premises of any one; and, if so, of whom?

Ans. He purchased them of Ruggles W. Clapp.

Int. 7. About what time was said purchase made? And, if you know how the property was paid for, state.

Ans. About the year A. D. 1858. It was paid for by deed of a store and a lot situated on Main street, in the city of Amboy, known, I believe, as the Ashley store, and 2 bonds of the school district of one thousand dollars ($1,000.00) each.

Int. 8. What was, if you know, the market value at that time of said bonds?

Ans. About ninety per cent., to the best of my recollection. They were very good; about ninety or ninety-five, I believe; ninety per cent.

Int. 9. Were they interest-bearing bonds; and, if so, at what rate?

Ans. To the best of my recollection, they were interest-bearing bonds, at 10 per cent.

Int. 10. By what school district were said bonds issued?

Ans. School district number four (4), in the town of Amboy.

Int. 11. Do you know how the said William E. Ives acquired the said bonds?

Ans. On the erection of a large school-house in said district number four (4.)

Int. 12. What had he to do with the erection thereof?

Ans. He took the contract from the district to erect the school-house.

144 Int. 13. Do you know what disposition the said R. W. Clapp made of the said two bonds?

Ans. I understood that he sold them to Ambrose & Little, then bankers in Amboy.

Question and answer objected to by M. H. Williams, att'y for complainants.

Int. 14. After said purchase did said Clapp say anything to you in reference to said bonds; and, if so, what?

Objected to.

Ans. Nothing that I recollect of.

Int. 15. From whom and in what way did you get your understanding that he had sold them to Ambrose & Little?

Objected to.

Ans. My recollection is that it came from Geo. H. Ambrose, one of the firm of Ambrose & Little, as he was one of the school directors with me at the time.

Cross-examination:

Int. 1. Who was the other school director at that time?

Ans. I think it was J. M. Davis, to the best of my recollection.

Int. 2. Was any party interested with William E. Ives in the contract for building of that school-house; if so, whom?

Ans. No one, to my knowledge, interested with him.

Int. 3. Did he build the school-house himself or subcontract the same; if so, to whom?

Ans. He sublet the mason-work to Summerhays; do not
145 recollect that he sublet any other part of it.

Int. 4. Do you know where and of whom said Ives obtained the money for the building said school-house?

Ans. I do not now recollect definitely; think it was funds of his own.

Int. 5. How do you know that said Ives gave said Clapp the Ashley store and the two bonds in question for the lot you say he purchased of Ruggles W. Clapp, now occupied by said Briggs?

Ans. I was a partner with said W. E. Ives, a law partner, at the time, and had personal knowledge of the transaction relating to the purchase of said property of Ruggles W. Clapp by said Ives and assisted in making out the papers, and at various times previous to the consummation of the trade had conversation with both parties (Ives and Clapp) in regard to the transaction.

Int. 6. What relation are you to the said William E. Ives?

Ans. A brother.

Int. 7. How long were you law partners together; from what time to what time?

Ans. I think from the fall of A. D. 1857 to the spring of A. D. 1861.

Int. 8. During that time were you not attorneys for Ruggles W. Clapp?

Objected to as not cross-examination by —.

Ans. A portion of the time.

Int. 9. State what portion of time.

Ans. I don't recollect any agreed time; in a general way. I cannot separate any portion of time; don't think that we did all
146 of his business.

Int. 10. When and where — the papers made and the transaction between said Clapp and said Ives consummated by the purchase of the said lot by said Clapp, and who was present?

Ans. I think it was consummated in our office. I do not recollect who was present except parties to the contract. I think it was in the fall of A. D. 1858.

Int. 11. What papers did you draw?

Ans. My recollection is I drew the deed for the Ashley store. My recollection is that I drew the deed for the house and lot, the store, both, for the reason that I was in the habit of drawing up the most of the papers.

Int. 12. Was the transaction at the time of the date of said deed or deeds?

Ans. I cannot say definitely.

Int. 13. Have you any knowledge of said transaction or trade except what was stated to you by Ives & Clapp?

Ans. My knowledge about the transaction is the conversation between the parties, drawing the papers, &c.

Redirect:

Int. 1. Had you and your brother or had he, to your knowledge, any general employment at any time as attorneys or attorney for the said R. W. Clapp?

Ans. We were.

Int. 2. Had you or he any employment for him except in the management of certain particular suits?

147 Ans. We generally made papers and deeds in his real-estate transaction. We did considerable business of that kind for him.

Int. 3. What I want you to state is whether your employment for him was limited to each particular piece of business as it arose or whether you had a general retainer from him, employing you in all his business.

Ans. It was in a general way, for all his business.

Int. 4. Please explain whether you mean by this that you were employed in all the business that he had from time to time to do or whether you mean that you had a general retainer in advance to manage any business that might arise.

Objected to as to form and substance.

Ans. I mean by that that we were employed generally in all the business he had to do.

Int. 5. Do you mean that as business arose from time to time he generally came and employed you or do you mean that in advance of the arising of any business you were employed to manage any that might arise?

Objected to as to form and substance.

Ans. My recollection is that our understanding with him was to manage any business that he might have. I cannot say that we had any definite contract with him about business; neither did he at any time engage us in advance nor leave a retainer with us to transact special business. I wish to modify the above—that he came and employed us from time to time generally as business arose, sometimes in advance of business.

148 Int. 6. Did you ever charge him with or receive from him any general retainer?

Ans. Not to my knowledge.

Int. 7. In addition to what you knew as to said contract from information from the parties state anything that you knew in reference thereto from personal knowledge and observation.

Objected to as not proper redirect examination.

Ans. I can state, in addition, that the value of the Ashley store, given in part payment for the house and lot bought of Clapp, was two thousand dollars, and brother was to pay for the Clapp house four thousand dollars.

Recross-examination:

Int. 1. Where there was an understanding that an attorney should act for a party generally in his legal business, was it customary among attorneys in that section at that time to require a retainer, either general or special?

Ans. I don't know of any custom in regard to it at all at that time in that place.

ENOS. J. IVES.

Subscribed and sworn to before me this 22nd day of October, A. D. 1873.

PHILIP A. HOYNE,
U. S. Commissioner, N. D. Ill.

Endorsed: Filed Oct. 22, 1873. Wm. H. Bradley, clerk.

149 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois,

In the Circuit Court of the United States for the Northern District of Illinois.

JULIA A. McLEAN, GEORGE E. McLEAN, MINNIE P. McLEAN, and WILLIAM B. McLEAN
vs.
LOT CHADWICK, HENRY CLAPP, RUGGLES W. CLAPP, WILLIAM E. IVES, and WILLIAM C. DUPUE.
} In Chancery. No. 690.

STATE OF COLORADO, } ss:
Rio Grande County,

The deposition of Charles W. Chadwick, of the county of Rio Grande and State of Colorado, a witness of lawful age produced, sworn, and examined upon his *corporate* oath on the 28th day of October, A. D. 1883, at the office of Jno. B. Haffy, in the town of Del Norte, county and State aforesaid, by me, Jno. B. Haffy, a commissioner duly appointed by a *dedimus protestum* issued out of the clerk's office of the circuit court of the United States of America for the northern district of Illinois, bearing testo in the name of the judge of said court and the seal of said court affixed thereto and to me directed as such commissioner, for the examination of the said Charles W. Chadwick, a witness in a certain suit and matter in controversy now pending and undetermined in the said circuit court, wherein

Julia A. McLean, George E. McLean, Minnie P. McLean, and
150 William B. McLean are plaintiffs and Lot Chadwick, Henry Clapp, Ruggles W. Clapp, William E. Ives, and William C. Depue are defendants, on the part of the defendants, upon the interrogatories and cross-interrogatories attached to the said commission and upon none others:

The said CHARLES W. CHADWICK, being first duly sworn by me as a witness in said cause previous to the commencement of his examination to testify the truth, as well on the part of plaintiffs as defendants, in relation to the matters in controversy between the said plaintiffs and defendants as he shall be interrogated, testified and deposed as follows:

Int. 1. State your name, age, occupation, and place of residence.

Ans. My name is Charles W. Chadwick. I was sixty-one years old last June. I reside on Willow creek, Rio Grande county, State of Colorado.

Int. 2. What relationship, if any, do you bear to the defendant Lot Chadwick?

Ans. He is my father.

Int. 3. State whether you are acquainted with the defendants Henry Clapp and Ruggles Woodbridge Clapp or either of them. If yea, state how long you have known them respectively.

Ans. I am acquainted with both of them. I have known them for thirty years.

Int. 4. Did you ever reside in Lee Centre township, in the county of Lee, in the State of Illinois? If yea, state from what time to what time as nearly as you can you resided in each.

Ans. I resided there off and on from the year 1836 up to
151 the spring of 1873.

Int. 5. Where did you reside during the year 1872?

Ans. I resided on Lot Chadwick's place, in Bradford township, Lee county, State of Illinois, from the fall of 1871 through the summer of 1872.

Int. 6. State whether or not you ever had a conversation with or heard the defendant Ruggles Woodbridge Clapp say anything concerning the burning of a house occupied by the defendant Henry Clapp.

Ans. I was present at a conversation between Ruggles Woodbridge Clapp and Henry Clapp, in which the burning of the house occupied by Henry Clapp was talked about.

Int. 7. If you answer the 6th interrogatory affirmatively, then please tell all the conversation, if there was one, and all that Ruggles Woodbridge Clapp said concerning the matter referred to, and state when and where it was said and who were present.

Ans. Ruggles Woodbridge Clapp came to the house occupied by Henry Clapp and said he wanted to talk with Henry. Henry Clapp refused to see him unless I was present to hear the conversation. Ruggles Woodbridge Clapp went on and stated in my presence that he and Martin Arnold were about to institute a suit in the United States court to foreclose the mortgage on the place. Henry Clapp then said that the mortgage was of no account, as Lot Chadwick had the notes for which the mortgage was given; then
152 Woodbridge said it would be easy to make notes to correspond with the mortgage; then Henry Clapp said, You cannot get up notes, for the notes for which the mortgage was given are in the handwriting of Ives, and he would testify to the notes; then Woodbridge Clapp said that he could turn the suit either way, and that if Lot Chadwick would give him two thousand dollars he would turn it in his favor. Henry said, Lot Chadwick is not a man to buy evidence; then Woodbridge said, They will burn you out. Henry says, Who do you mean by "they?" Woodbridge said, The Shaws; then Woodbridge left angry. I was present during the whole of the conversation.

Int. 8. State whether or not you ever heard a conversation between the defendants, Ruggles Woodbridge Clapp and Henry Clapp, concerning the testimony of said Ruggles W. Clapp in suit of Edwin W. McLean against Lot Chadwick and others, commenced in May, 1872, in the United States circuit court for the northern district of Illinois, upon a mortgage of land in Bradford township, Lee county, Illinois, given said McLean by said Ruggles W. Clapp. If you — yea, please relate such conversation. State also when and where it occurred, who were present, what you were doing at the time, and all about it as fully as you are able.

Ans. I heard several conversations between Woodbridge and

Henry Clapp, but I can't recall them, and could not state what was said.

Int. 9. Do you know or can you set forth any other matter
153 or thing which may be a benefit or advantage to the parties at issue in this cause or either of them or may be material to the subject of this your examination or matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. No; I don't think of anything more. There was something about testimony, but I don't remember now what it was.

To the several cross-interrogatories propounded to the witness he further deposes and says as follows:

Cross-interrogatory 1. When did you cease living with your father's family?

Ans. In the year 1850.

C. I. 2. In what families besides your father's, in Lee county, Illinois, have you lived?

Ans. No one, except Ephriam Whitney's family.

C. I. 3. When and to whom have you been married?

Ans. I was married first in the year 1849 to Nancy J. Holderby and again in the year 1852 to Phebe A. Whitney.

C. I. 4. Have you any interest in the result of this suit? If so, state fully the nature and extent of such interest.

Ans. I have no interest whatever.

C. I. 5. When and where did you last see your father?

Ans. I saw him in Lee Centre in the fall and winter of 1881.

C. I. 6. Have you had any correspondence with any of the defendants in this case in reference to your testimony in the case? If so, produce all letters received by you in such correspondence,
154 together with all papers and memoranda inclosed therein or received therewith, and cause the commissioner to make full and correct copies of all such letters, papers, and memoranda and attach the same as a part of your deposition. Produce for this purpose all letters, papers, and memoranda referred to, whether received at recent or remote periods.

Ans. I have never had any correspondence with any one in regard to my testimony or to any matters involved in the case.

C. I. 7. If in answer to the sixth and seventh direct interrogatories you undertake to relate a conversation, please state all that was said as to matters not embraced in the question, as well as to matters therein referred to, what was being talked about and said before the burning of the barn was mentioned and what was talked about and said after that subject was dropped. State the entire conversation that took place while you and Ruggles W. Clapp were present, and all that was said by any person on that occasion.

Ans. My answer to direct interrogatory seventh comprises all of the conversation had between Woodbridge Clapp and Henry Clapp at that time.

C. I. 8. If in answer to the eighth direct interrogatory you say you were present at a conversation such as is therein referred to, you

will please state the year and the month where it took place, what you had been doing that day, with whom Ruggles W. Clapp came to the place, where it occurred, and with whom he left.

Ans. I cannot call to mind the conversations or the circumstances.

155 C. I. 9. Did you see Egbert Shaw at the place of such conversation either shortly before or shortly after it took place; if so, who, if any one, was with said Shaw?

Ans. I think Egbert Shaw came there a few days after, but I don't recollect much about it; I could not be certain.

C. I. 10. Were you in Henry Clapp's employ at the date of this conversation; if not, in what business were you then engaged; if in farming, for whom and on what farm?

Ans. I was not in the employ of Henry Clapp. I was merely living in the house.

C. I. 11. When since said conversation was your attention first called to it, and by whom and in what manner?

Ans. My attention has never been called to it since, until now.

C. I. 12. Have you written to any person about it; if so, when and to whom?

—. ——.

C. I. 13. Do you swear that you remember clearly and correctly all the conversations you have undertaken to relate?

Ans. I do.

C. I. 14. May you not be mistaken in your memory of them?

Ans. No; I am not mistaken in regard to that conversation. I recollect it distinctly.

C. I. 15. Do you know whether your father has ever made a will? If so, and you have any knowledge of its contents, please state its terms and conditions as nearly as you can.

Ans. I don't know that he has ever made a will.

156 C. I. 16. Has he deeded to you or any member of his family or to Henry Clapp or his wife or to any person for them or either of them any portion of the land involved in this suit, deeded to him by Henry Clapp and wife; if so, what portion and to whom?

Ans. I don't know of his deeding any of it.

CHARLES W. CHADWICK.

Endorsed: Filed Sept. 4th, 1883. Wm. H. Bradley, clerk.

157 EXHIBIT 7 OF DEFENDANT'S TESTIMONY. James F. Sanford, Examiner.

In the Supreme Court of Illinois, Northern Grand Division. September Term, A. D. 1873.

LOT CHADWICK, Appellant,
vs.
EDWIN CLAPP, Appellee.
} Appeal from Lee.

Abstract of Record.

Placita.

Bill of complaint, filed September 14, 1869, alleges that upon October 14, 1853, one John F. Clapp executed a warranty deed to one Jason Clapp and one Edwin Clapp, whereby he conveyed to them certain tracts of land (as shown hereafter). Said deed was filed for record October 29, 1853, and was recorded in Book J of Deeds, page 68; that on October 29, 1853, one Lewis Clapp conveyed to said Edwin Clapp a certain tract of land (as shown hereafter), the deed of which is recorded in Book J of Deeds, page 89; that on November 28, 1855, said Jason Clapp executed a deed to one Ruggles W. Clapp of the undivided one-half of the above-referred-to tracts of land, which deed was filed December 5, 1855, and recorded in Book M, page 525; that on November 28, 1855, the said Edwin Clapp and Mary, his wife, executed a deed of the undivided one-half of the above-referred-to land and to other land hereafter de-
158 scribed, which deed was filed December 5, 1855; that upon January 10, 1868, said Ruggles W. Clapp and wife delivered a deed signed and executed to one Henry Clapp, whereby they conveyed the title to all the above-described lands, which was filed January 30, 1868, and recorded in Book 17 of Deeds, page 51, further set out in "Exhibit A."

Further avers that on March 1, 1869, said Henry Clapp and Sarah A., his wife, signed, sealed, executed, acknowledged, and delivered their deed by which they conveyed to complainant all of the above-referred-to land, which deed was filed the 30th of March, 1869, and recorded in Book No. 14, page 1,547, as shown more fully in "Exhibit B;" that since the execution of said deed complainant has been in peaceable possession of said lands, and is now the sole and legal owner thereof; that since the Government of the United States parted with title to said land said Henry Clapp has held, until he deeded the same to complainant, the equitable or legal title to said land and had been in actual occupancy during all of said time; that after said Edwin and Mary M. Clapp had given deed to said Ruggles Clapp, and after said Ruggles had filed the same for record and before the same had been recorded, said deed was by some persons unknown to complainant abstracted from said recorder's office, and was afterwards by such persons, or some one at their instigation, mutilated by lines drawn across the signatures to said deed; that, though often requested, the said Edwin and Mary M. Clapp

neglect to execute and deliver to Ruggles W. Clapp or Henry
159 Clapp or to complainant a good and sufficient deed in place of the one mutilated, all of which is contrary to equity, &c.

Prays that Edwin and Mary M. Clapp be made defendants, &c.; that the court order above-mentioned deed to be admitted to record the same as if the signatures had not been erased, or that they make a new deed, and that in default thereof the master in chancery be ordered to make a good deed to said lands.

Affidavit of Lot Chadwick to the truthfulness of above bill.

"EXHIBIT A."

A deed between Ruggles W. and Emily B. Clapp and Henry Clapp; consideration, $100.

The party of the first part releases and quitclaims to the party of the second part "all of the east half of the southwest quarter of section twenty-eight (28); also all of east half of the northwest quarter of section thirty-three (33); also all of the northeast quarter of section number thirty-three (33); also all the northeast quarter of the southeast quarter of section thirty-three (33); also all of the west half of the northwest quarter section thirty-four (34); also all of the northwest quarter of the southwest quarter of section thirty-four (34), in township twenty-one north, range eleven east, of the fourth principal meridian, in the county of Lee, State of Illinois."

Acknowledged by Ruggles W. Clapp before Charles Net-
160 tleton, a notary public in and for the county and State of New York.

Emily B. Clapp acknowledged same before Aaron W. Pearl, justice of the peace.

Filed for record January 30, 1868.

"EXHIBIT B."

A warranty deed from Henry and Sarah A. Clapp to Lot Chadwick; consideration, $10,000.

The west half of the northwest quarter and the northwest quarter of the southwest quarter of section number thirty-four (34), and the northeast quarter of the southeast quarter of section number thirty-three (33), and the northeast quarter of section number thirty-three (33), and the east half of the northwest quarter of section number thirty-three (33), and the east half of the southwest quarter of section number twenty-eight (28), all in township number twenty-one (21) north of range number eleven (11) east of the fourth principal meridian, containing four hundred and eighty acres of land, more or less.

Acknowledged before Albert Z. Bodine, justice of the peace.

Filed March 3, 1869.

Summons.

Rule on defendants to answer within 45 days from this 29th of December, 1869.

On February 9, 1870, Mary M. Clapp filed her demurrer to complainant's bill with the usual averments, with the additional one that said bill shows said Mary M. to have been a married woman
161 at the time of the alleged execution of a deed to Ruggles W. Clapp by defendants, and at filing of bill said defendant yet remained a married woman, which precludes complainant from relief prayed.

Answer of Edwin Clapp, filed February 9, 1870, admits that on October 14, 1853, one John F. Clapp was seized in fee of the east half of the southwest quarter of section number twenty-eight (28) and the east half of the northwest quarter of section number thirty-three, all in township twenty-one of range eleven east of fourth principal meridian, in county of Lee, State of Illinois.

Admits that on last-named day said John F. Clapp conveyed said lands to Jason Clapp and this respondent, and that the deed was filed and recorded as claimed in said bill.

Admits that on October 9, 1853, one Lewis Clapp was owner in fee of the northeast quarter of section number thirty-three, in township 21, range 11 east, of 4th P. M., in said Lee county; also true, on said last-named day, said Lewis Clapp, by warranty deed, conveyed said last-named lands to this respondent, and said deed was filed and recorded.

Respondent admits that on Nov. 28, 1855, said Jason Clapp made and delivered a deed to Ruggles W. Clapp, conveying an undivided half of the east half of the northwest quarter of section number 33 and the east half of southwest quarter of section 28, all in township 21, range 11 east, of 4th P. M., in Lee county, together with other lands, as stated by complainant.

162 Respondent believed until 1860 that said deed had never been filed for record, but he has learned it has been filed and recorded, but thinks he can show that such record is a fraud upon respondent.

Respondent, further answering, says that it is true that on or about Nov. 28, 1855, this respondent and his wife, Mary M. Clapp, did sign, seal, and deliver a deed to Ruggles W. Clapp, conveying to him the title to the undivided one-half of certain lands which respondent believes to be correctly described in complainant's bill; but as he has not access to said deed, he desires to have the description open to proof.

Desires that the filing of the deed for record be proved, as he knows nothing of such filing and believes it to be a fraud, but he can't positively contradict the oath of complainant.

Respondent has no knowledge of the conveyance of said lands by Ruggles W. to Henry Clapp, or of the conveyance by Henry Clapp to complainant, and therefore denies the same and calls for proof thereof; and if such conveyances were made they were a gross fraud upon respondent and one Ebenezer Clapp.

Respondent avers that said Ruggles W. and Henry Clapp are

brothers; that present wife of Henry is a daughter to complainant; on information and belief avers that the statement that there was a consideration of $10,000 paid by complainant for the conveyance to himself is false; denies that said complainant is *bona fide*
163 owner of said real estate, but that complainant has combined with said Henry Clapp, his son-in-law, to defraud respondent; denies that complainant has been in possession of said lands.

Believes that said Henry Clapp has had some interest in said lands, but he has not been the actual occupant of them; but, on contrary, complainant has had possession of them and through his agent has leased them, and that complainant knew this when he made the contrary statement in his bill.

Denies that if said deed was ever left for record after filing and before recording said deed was abstracted from office and defaced.

Denies that he had ever been requested by any one to replace said defaced deed with another one, and avers that it was not his duty to do so.

Respondent further says that said Jason Clapp and respondent took the title to said lands as security for advances made to said Henry Clapp, and that upon payment for said advances said deed was to be returned to Henry Clapp or to any one he directed; that upon payment of said advances, at the direction of Henry Clapp, Jason Clapp and respondent conveyed lands to Ruggles W. Clapp; that soon after the last-mentioned conveyances and in September, 1855, Ruggles W. Clapp redelivered said deeds to respondent, and stating that the said conveyances had never been recorded, and that title still remained in respondent and Jason Clapp and respondent was still to hold title to secure the payment of $2,600 advanced by one Ebenezer Clapp to said Henry Clapp, which sum Henry
164 agreed to pay to Jason Clapp and respondent in two years after July 18, 1856, with interest at ten per cent. per annum.

Respondent says that he had never been in Illinois and knew nothing of this land, but relied entirely upon Ruggles W. and Henry Clapp, but that in 1860 he discovered the intention of said Henry and Ruggles W. to swindle him and their father, Ebenezer Clapp, and that the deed from Jason to Ruggles W. had been recorded.

Avers that after the redelivery of said deed respondent appointed Cephas Clapp, of Lee Centre, agent, who paid the taxes upon said lands, but said Henry Clapp always managed to get hold of the proceeds of said lands.

Avers that during all this time complainant lived in the immediate neighborhood of these lands, and that the respondent had interest in said land was a common topic of conversation in said neighborhood, and respondent believes complainant must have known of respondent's claim when he took said deeds from Henry, and did so with the intention of defrauding respondent.

Respondent further states that he, on Nov. 3, 1866, loaned said Henry Clapp $139 on the strength of his supposed title to these lands, which money was payable on demand, with ten per cent. interest; that no part of the $139 has been paid and no part of the $2,600, except $30 on Oct. 30, 1863, and $20 Oct. 30, 1864; that in 1860 re-

spondent was informed that Ruggles W. had told respondent a falsehood in regard to the recording of said deed;
165 whereupon respondent sent said deed and said deed from respondent to Ruggles W. Clapp to his agent, Cephus, for investigation, and that Henry Clapp desired to borrow said deeds with avowed purpose of copying them; that said Cephas refused permission, but told him to copy them there; that said Henry went away and returned soon with one A. Z. Bodine, a J. P., and commenced copying them there; that said Cephas was called from the room, and upon his return said Henry and Bodine were gone with deeds; that said Cephas Clapp has requested said Henry to give said deeds up, but said Henry has always refused and still hold them, which obtaining was by fraud and the withholding is by fraud.

Prays the court to order complainant to return to respondent said deeds.

Insists that it is improper to join Mary M. Clapp, as she was a married woman at the time of the execution of this deed to R. W. Clapp and still is such, and relief could not be granted because of her coverture.

Avers that Ebenezer Clapp should be made a party to this suit.

166 *Cross-Bill of Edwin Clapp. Filed November* 9, 1870.

Edwin Clapp, of Pittsfield, Mass., says he is a son of one Jason Clapp, who many years before his death was a resident of Massachusetts, and who died October 20, 1868; that Ebenezer Clapp, a resident of Massachusetts, was a brother of said Jason and father of Henry Clapp, a resident of Lee county, Ill., and of one Ruggles W. Clapp, and that wife of said Henry is daughter to one Lot Chadwick; that on October 9 and 14, 1853, one John F. Clapp conveyed to said Jason Clapp and complainant (Edwin Clapp) the lands involved in this controversy, which conveyances were duly recorded; that said Jason and complainant took said conveyances in trust as security for money advanced to Henry; upon the payment of said advances. the lands were to be conveyed to whomsoever Mary directed; that on or about November 28, 1855, Henry refunded said advances with interest, and said land was conveyed to Ruggles W. Clapp; that Henry Clapp was the equitable owner and Ruggles W. merely trustee; that on July 18, 1856, Ebenezer Clapp loaned to Henry, at ten per cent., the $2,600, payable two years after date, with these lands as security; that Ebenezer was old and incapacitated, and the note was made to Jason and complainant, who were to do his business and who acted as trustees and took the note, securities, &c.; that Ruggles W. informed complainant that the deeds had not been recorded, and that the title was, as before, in Jason and complainant; that complainant had confidence in Ruggles W.
167 and Henry, and thought the redelivery of the non-recorded deeds would vest the title in Jason Clapp and complainant; that on December 10, 1860, he was first informed that the said deeds had been recorded; that after complainant knew of this said Henry acknowledged his indebtedness to his father; that complainant still

held legal title to said lands, and complainant was thereby led to feel safe again; that on November 9, 1860, Cephas Clapp was appointed agent for complainant and acted as such until the conveyance of Henry to Chadwick; that said Henry acknowledged said Cephas' authority and allowed him to make repairs, pay taxes, &c., but said Henry always managed to get nearly all the rents and profits of said lands; that on April 1, 1864, he sent to Cephas Clapp said deeds; that on November 3, 1866, complainant lent Henry Clapp $132, payable on demand, at ten per cent., with the implied understanding that said lands should be security; that none of this sum has been paid, and that there is now due on it $172, and that there is due on the note given for money received from Ebenezer Clapp $62.76; that the money advanced by complainant for repairs on farm and for rent over and above profits received from farm amount to $100; that complainant has performed all the active duties of the trust.

That complainant further showeth that said Henry and said Ruggles have attempted a scheme to deprive complainant of his interest in said lands. In pursuance of which said Ruggles, on Jan-
168 uary 10, 1868, signed and acknowledged a blank deed for conveyance of real estate, and gave it to Henry, who (or some one at his request) filled up said deed, with himself as grantee, and with the description same as in above-shown deeds, and had same recorded on January 30, 1868; that said Henry, on February 1, 1878, by fraud obtained the above-mentioned deeds from said Cephas Clapp, and has never returned them, though often requested; that on March 1, 1869, said Henry and wife executed a deed of said lands to one Lot Chadwick for the pretended consideration of $10,000, which pretended conveyance was filed for record March 3, 1869; that since such pretended conveyance said Chadwick and said Henry Clapp have assumed entire control, to the exclusion of complainant and his agent; that said Chadwick filed a bill of complaint in this court on September 14, 1869, making Edwin and Mary M. Clapp defendants. A synopsis of said bill.

Further state- that the assertion of Chadwick that he is owner of land is untrue; that he accepted said conveyance merely to defraud complainant and said Ebenezer Clapp; that said Chadwick lived in the immediate neighborhood of said lands and knew of complainant's interest in them, and knew of fraudulent actions of said Henry.

Complainant does not know that said deed from complainant to said Ruggles was ever filed for record or not or whether it has defaced by drawing inked lines over the signatures, as charged in said bill, but avers that there is no record of the same, and that if such was the case and said Chadwick knew it that was notice
169 enough to him that complainant had not parted with his interest in said lands; that he believed said Chadwick has never paid any considerable portion of said pretended consideration money; that said Henry still has possession of said lands, and complainant charges that said Henry is as much as ever the equitable owner of said lands.

Complainant submits that he has an equitable mortgage on the lands described in the deed from said Jason to Ruggles and from complainant to Ruggles; that all the pretenses of said Lot Chadwick to ownership of said lands are false.

Makes Ebenezer Clapp, Henry Clapp, and Lot Chadwick defendants.

Prayer for Summons.

Waives the oath to the answer of defendants.

Pray- that he may have lien in the nature of an equitable mortgage upon all said lands to the amount of said indebtedness of said Henry to said Ebenezer and to complainant; that said Lot Chadwick or said Henry Clapp, or both, be ordered to pay said claims, or that so much of said lands as necessary be sold to satisfy said claims; that neither of the parties to this suit may be a bidder; that in default of redemption the buyer be allowed a deed, &c.; that the record of said conveyance from said Jason Clapp to said Ruggles Clapp, from Ruggles to Henry, and from Henry to Lot Chadwick be declared null and void; that said Lot Chadwick be ordered to deliver the deeds from said Jason to said Ruggles W. Clapp and from
170 complainant to Ruggles W. to complainant; that said Chadwick be ordered to pay costs of this suit, and that other relief be granted, &c.

Summons for Ebenezer Clapp and Henry Clapp.

On Dec. 6, 1870, rule on Lot Chadwick and Henry Clapp to answer to said cross-bill by Feb. 1, 1871.

Answer of Lot Chadwick to Cross-Bill.

Admits that said Jason is brother to said Ebenezer, who is father of said Henry and Ruggles, and that Edwin is son of said Jason, and that said Henry's wife is daughter to said Chadwick. Respondent admits that conveyances were made of certain lands by John F. Clapp to Jason Clapp and Edwin Clapp and by Lewis Clapp to Edwin Clapp on October 14 and 29, 1853; alleges that said Henry was always equitable or legal owner of said lands, and that said Jason or Edwin Clapp held the title to them in order to save them from the creditors of said Henry, who was financially involved; admits the conveyance to Ruggles of said lands by Edwin and Jason at the request of Henry; avers that Ruggles took said title in trust for Henry in order to execute a mortgage upon them to one McLean, of New York, for money loaned for the use of Henry, to the amount of $7,000, in the name of said Ruggles; denies the loan of $2,600 to Henry by Ebenezer, and that Edwin was to hold the title of said lands as security; avers that the filing of said deed from said Edwin to Ruggles was endorsed upon its back, and
171 that if said Edwin did not see it it was his own fault, and the same in regard to the deed from Jason to Ruggles; denies that he knew of said Cephas being agent for Edwin, except to keep the said lands from said Henry's creditors; avers that said Henry lived on the place and seemed to have entire control; denies that

Edwin ever sent Cephas said deeds; denies the loan to Henry of $139; avers that if Ebenezer did make such said loan to Henry that he has now relinquished all right to it, and that the attempt to enforce its payment is unknown to Ebenezer; denies the statement that there is due to Edwin $100 for taxes and repairs; denies the filling up of a certain deed by said Henry, and avers that the deed is now in his possession and seems to be regular and is duly recorded; denies that Henry ever obtained deeds from Cephas in the manner alleged by complainant, and denies that complainant ever came to respondent's house for them, and avers that if such things did occur he knew nothing of them; avers that the purchase of said lands by respondent was not a "pretended" purchase; avers that since said purchase respondent has had entire control of the lands to the exclusion of said Henry and everybody else; denies that said purchase by respondent was made to defraud said Ebenezer and Edwin; denies that before said purchase he knew of the defacement of said deeds by drawing lines across the signatures; alleges that he, respondent, was shown a certificate of title from the recorder, averring that two deeds from Jason and Edwin Clapp to Ruggles W. were filed and recorded during the negotiation for pur-
172 chase of said lands, and he was informed that said deeds were in the office of said Henry's attorney, at Dixon, and respondent was shown a deed from Ruggles to Henry; and respondent avers that he knew that Henry lived on said lands and claimed to be the owner, and he further knew that there were judgments against said Henry and executions out and said lands levied upon, and one of the judgments was against Ruggles before he made the deed to Henry, and respondent was to pay off said judgments as part purchase-money; all which matters lead respondent to believe that said Henry was legal as well as equitable owner of said lands.

Respondent avers that he paid the $10,000 in manner as follows:

Cash in hand (bonds)	$2,150 00
For stamps and making deed	11 00
Executions, E. L. Clapp *vs.* R. W. Clapp	760 80
Two judgments, Emerson *vs.* Henry Clapp	244 28
Execution, N. Chase *vs.* Henry Clapp	125 10

He also surrendered to Henry certain notes which were due and payable:

One note dated Oct. 15, 1866	1,500 00
Interest on same due	375 25
One note dated March 1, 1867	40 00
Interest on same	8 00
Note dated Dec. 20, 1867	3,156 00
Interest on same	375 00
Note dated June 1, 1868	304 00
Interest on same	22 80
Note dated Jan. 1, 1869	250 00
Interest on same	4 17

Paid for said Henry taxes on said land to the amount of	$370 50
For other debts	302 87
Total	$10,000 00

173 Avers that executions were out and levied upon said premises, and the only way for respondent to get his debts paid was to take the land as he did, supposing, as he did, that said Henry Clapp was the legal and equitable owner.

Respondent further avers that though said Henry and wife have lived on said lands since their sale they did so as the agents of respondent merely, who at the same time desired to give his daughter a home, as she had none.

Denies that said Edwin has any equitable interest in said land; prays that respondent may have the same benefit of exception as would have had if demurred to the cross-bill.

Filed February 27, 1871.

Answer of Henry Clapp to the Cross-Bill Filed by Edwin Clapp.

Begins the same as in Chadwick's answer to cross-bill.

Denies that in July, 1856, he received a loan from Ebenezer, as stated in said cross-bill, and avers that the facts in the case are that respondent received a loan from said Jason and Edwin; that in 1855 they settled, and a deed was given by Jason and Edwin to Ruggles W.; that soon after a mortgage of said premises was given to one McLean to secure a loan for the benefit of said Henry, all of which was known to said Edwin; that after this mortgage debt had been paid and respondent demanded of said Ruggles the deeds he informed the respondent that the acknowle-gements to said deeds were imper-

174 fect and he had returned them to said Edwin and Jason, who, he said, then held them; that it was as many as six months after this transaction that respondent received the $2,600 from said Ebenezer, and respondent denies that the said deeds were ever given as security for said money or was ever asked to be given by said Ebenezer; avers that his father never requested the payment of said moneys, and, respondent believes, never intended it should be paid; that in November, 1866, respondent, in presence of said Jason and Edwin, offered to pay said debt, and Edwin, said respondent's father, would not take the money, and it was then suggested in presence of all that Ebenezer should make a will granting to respondent said indebtedness as his portion, which said Ebenezer did shortly after; avers that said Edwin in this suit is acting without the knowledge or consent of said Ebenezer; denies that he from time to time acknowledged that said Edwin held the title to said lands, and avers that since the interview with his father at Pittsfield, Massachusetts, he considered said debt as cancelled; denies that he ever acknowledged that said Edwin or said Jason held the legal title to said lands; denies that said Cephas Clapp ever exercised any management over said lands except as the agent of respondent while said respondent

was in the army; denies that the said deeds were ever sent to said Cephas for reasons alleged in cross-bill; avers that on January 11, 1868, he received a deed of disputed lands from Ruggles W.
175 Clapp, all filled out and signed by said Ruggles; that said Ruggles and respondent went to Chesterfield, Mass., where his wife signed it, both of whose signatures were duly acknowledged; that at same time said Ruggles delivered to respondent another deed, purporting to be for 80 acres, which had nothing to do with this suit, in which deed certain blanks were left, from which fact said Edwin may have got the impression as alleged in cross-bill; that on January 24, 1868, respondent requested said Jason and Edwin to deliver to him said deeds given by them to Ruggles; that they told respondent that said deeds were with Cephas Clapp and respondent could call there and get them; that soon thereafter, on his return home, when respondent went to have said deed from Ruggles to respondent recorded, he found that one Ebenezer Lee Clapp had commenced a suit against said Ruggles and had attached said lands; that soon after he called at said Cephas' house and Cephas gave respondent the deeds from Jason and Edwin to Ruggles, and said Cephas and respondent rode together to town when respondent went to Dixon to see his attorney about the attachment of his lands by E. Lee Clapp and showed to his attorney said deeds, when they first saw that the two deeds had been mutilated; denies that said Cephas ever requested the deeds of him; denies that said Edwin was to have the deeds as security for the $130 loan, and avers that he offered to pay once and said Edwin did not produce the note and he has not seen him since; denies that said Edwin ever paid any taxes or made any repairs; avers that the sale to Lot
176 Chadwick was a valid sale; that he lived on the land before he sold it as legal owner and since as agent of said Chadwick; denies that said Ebenezer has a lien upon said lands; avers that the said lands were about to be sold under an execution by E. Lee Clapp against said Ruggles when said Chadwick bought them, and that said Edwin knew of this and wrote to respondent to pay it and said nothing about his having a lien upon said lands; that respondent had possession of said deeds to Ruggles as much as a year before he made the sale, during which time said Edwin laid no claim to title; that respondent knows nothing of having paid the $20 and $30 endorsement mentioned.

Filed March 6, 1871.

MARCH 20, 1871.

Leave granted complainant to file a new bill in place of the old one, said to be lost.

Replication of Edwin Clapp to the answer of Lot Chadwick to cross-bill of Edwin Clapp.

Replication of Edwin Clapp to the answer of Henry Clapp to cross-bill of Edwin Clapp.

The replication of Lot Chadwick, complainant, to the answer of Edwin Clapp.

JUNE 22, 1871.

The demurrer of Mary M. Clapp is overruled.

On motion of complainant, it is ordered that the testimony in this case be closed by the first day of next term of court.

NOVEMBER 28, 1871.

It is ordered that the time for closing testimony be ex-
177 tended until — day of next term.

Answer of Ebenezer Clapp to the cross-bill filed by Edwin Clapp, filed January 24, 1872, says that all the averments in said cross-bill, of which he has any personal knowledge, are true, and that he believes all the averments to be true.

Signed by— A. K. TRUSDELL, *Solicitor.*

Filed January 24, 1872.

FEBRUARY 13, 1872.

Court overrules the demurrer of Mary M. Clapp. Said Mary elects not to plead further to said bill. It is moved by complainant's counsel and ordered by the court that complainant have a decree as prayed for in the bill against her.

Complainant's counsel moved that the deposition of Edwin Clapp be suppressed.

Edwin Clapp, by counsel, moved that the deposition of Henry Clapp be suppressed.

By agreement of the parties it is ordered that this cause be heard in vacation and that a decree be entered as of this term.

Certificate of Testimony.

Lot Chadwick, complainant in original bill, gave in evidence the following testimony:

Deed from Jason Clapp and wife to Ruggles W. Clapp offered and read, the signatures to which were defaced by ink lines
178 drawn across them, and the words "No go" written immediately under them. The deed was to the same lands heretofore described.

The certificate of acknowledgement of the deed by Jason and Celia E. Clapp, signed by John A. Walker, a justice of the peace.

Filed for record Dec. 5, 1855, and recorded in Book W of Deeds, pages 15, 23, and 28, in recorder's office of Lee county, Ill. The certificate of record defaced by ink lines.

Deed from Edwin Clapp and Mary Clapp to Ruggles W. Clapp of lands heretofore described, the signatures to which were erased and words "No go" written after them.

Certificate of acknowledgement, signed by John A. Walker, justice of the peace.

Filed December 5, 1855, and recorded in Book K; certificate erased by ink lines.

WILLIAM E. IVES sworn:

I live at Amboy, Illinois; attorney-at-law; have practiced in Amboy for 18 years; was acquainted with Ruggles W. Clapp.

Question. Did you at any time draw a mortgage from Ruggles W. Clapp to one McLean?

(Objected to. Overruled. Exception.)

Answer. Yes, sir; saw deeds in possession of Ruggles W. Clapp; think mortgage was in my handwriting; never drew more than one mortgage—this was dated in December, 1855; drew
179 mortgage from deeds Ruggles had at that time; could not identify mortgage; it was to secure McLean for $6,000 or $7,000. An instrument was shown me, purporting to be an abstract of record, signed by the deputy recorder; saw that paper in possession of McLean some time afterwards in Massachusetts.

Cross-examination:

Notes given with mortgage had been surrendered; surrendered to Ruggles W. Clapp; $500 had been paid to me; notes were surrendered by me, as sort of voluntary agent for McLean; did not write the answer of Henry Clapp to cross-bill of Edwin Clapp; was signed by me.

M. H. WILLIAMS sworn:

Am an attorney at the bar. I have not in my possession now a certificate relating to this mortgage signed by Isaac S. Boardman, as recorder. It was in my possession until just before the June term of this court. I left it then with Williams & Thompson, attorneys, Chicago; have no objection to sending for it; have no copy of it; (shown a paper) can't say whether this is a copy or not; don't remember of its being signed by George Hudson.

Deposition of Lot Chadwick, Produced by Edwin Clapp.

Am 79 years old; have no occupation; live in Lee Centre;
180 was postmaster in Lee Centre from April 17, 1861, to October 17, 1868; am complainant in this suit; have known Henry Clapp for twenty or twenty — years; he may be a party by a cross-bill; he married my daughter on October 1, 1866; said Clapp and wife executed a deed to me on March 1, 1869, in Bradford, Lee county, Illinois.

Int. 7. What did you give to Henry Clapp or his wife in exchange for said deed, if anything, and to which did you give it?

(Objected to on account of immateriality.)

Answer. Gave him something over $6,000 in notes, which I held against him; $2,150 in money; paid for writing deed, $1; stamps for deed, $10; paid an execution of E. Lee Clapp *vs.* Ruggles W. Clapp, $750; paid two executions of Emerson *vs.* Henry Clapp, $244.28; paid to Tooker for Harriet Chase, $125.12. Said judgments

were liens upon the land. Paid taxes, $170.80; other taxes, $200; paid one Trowbridge for said Henry, $177.39; to one Gardner for Henry, $148.75; for cemetary lot for him, $10; for a stove for Henry, $30. Notes and money were delivered at my house at the time. A. Z. Bodine was present. I passed money and bonds over to him; can't say whether he counted them or not. I picked up the Lee county bonds here and there; the other bonds came through G. E. Haskell and other sources. Got some of Lee county bonds from Ira Brewer, Van Orsdell, and others. Can't remember number, class, or payees of said Lee county bonds. Can't tell what Henry did with bonds and money. Have no distinct recollection of buying some of said bonds back. Don't remember anything about them.

181 Money and bonds were first delivered; an hour or two afterwards the notes. Bodine was there at my house long enough to make a deed. Henry and wife acknowledged it there. Bonds were not due yet. Should think my daughter, Mrs. Clapp, was about 45. I have six children. She was before married to one James Milligan. Don't know whether Milligan is dead or not. They were divorced at Dixon, at her suit for desertion. (Objected to as secondary evidence.) After her divorce she lived at my house. After marriage with Mulligan she lived at La Salle and Maryville, Illinois; then went to Indiana. She studied at medical college, Cleveland, Ohio, and graduated there; then went to St. Louis, Missouri, and practiced medicine there; then went into army at Cairo; after that can't tell of my own knowledge where.

Int. 33. State, as near as you can, the date of her marriage to Mulligan, the time she graduated, the time she commenced the practice of medicine at St. Louis.

(Objected to as immaterial.)

—. She married Mulligan some twenty-five years ago; she graduated some sixteen or seventeen years ago; she told me that while in St. Louis she had an office some of the time with one McDowell.

Int. 37. Was there any courtship between Henry Clapp and your daughter? If yea, how long did it continue, and where was it carried on?

(Objected to as immaterial.)

Ans. Suppose there was. Can't state time. He came to my house when she was there.

182 Int. —. Has Henry Clapp been twice married? Is his first wife dead? If yea, how soon after her death did he marry your daughter?

Ans. First wife is dead; can't say how soon after he married again; think said first wife died in a house about fifty rods from mine; can't tell what time elapsed between her death and second marriage. It was on 3d and 4th of March, 1869, that I spent two days in Dixon; my daughter, Mrs. Haskell, was with me. I paid taxes to J. T. Little, county treasurer. The taxes of 1868 I paid at county clerk's office for Colonel Dement to Jason Ayres, Charles Ingalls, and to E. B. Stiles; think I paid Trowbridge $177.39 in fall

of 1869. I bought cemetery lot of John M. Gardiner, treasurer of association; think it was fall of 1869. In stating what I paid for deed I referred to memorandum. I made it latter part of last week; some one I now show to B. H. Trusdell; have objections to showing entire memorandum book. I made the memorandum at no one's suggestion. Judge Eustace told me that on February 5 my deposition would be taken, so I prepared this memorandum.

Int. 56. State the consideration of the $6,000 and upwards of notes which you say you delivered to Henry Clapp on the first of March, 1869.

(Objected to on account of immateriality.)

Ans. Consideration was mostly money; may have been some bonds. The note Henry Clapp gave me and dated October 15, 1866, was made when dated, and I think my family was present—my wife and youngest daughter and perhaps Mrs. Clapp. I gave
183 him money for note; the amount was $1,875.25, less interest from October 13, 1866, to March 1, 1869. Received no security but note; don't know what he did with money; suppose I took money from Mrs. Haskell's safe; I can't say whether I borrowed it from her or whether it was my own there on deposit; can't tell from whom I received the money. If it was mine I was then in the habit of getting money from the East—from Corydon Chadwick and Robert Gardiner. Said Chadwick lives in China, Maine. Can't tell the dates of receipts; think I owe him now about $3,000. I received money by drafts, in registered letters; sent them principally to Chicago to be cashed. Sabin Trowbridge and George W. Lynn took drafts in for me; can't state when. Received some in 1866 from an Augusta, Maine, bank.

Int. 80. Have you any impression what you did with those drafts received in 1866?

Ans. Received money from drafts received in 1866; can't say from whom. Corydon Chadwick is my cousin; he sent me money because it was worth six per cent. there and ten here, and so I could pay him eight and save two.

(Objected to.)

Robert Gardiner has two residences—one in Newport, Rhode Island, the other in Gardiner, Maine. He sent me money in 1867; he sent me $1,000 at a time by draft, in registered letter; can't tell what I did with the money.

The note that Henry Clapp made to me on March 1, 1867, was made at my house. I gave him money for it in winter; he did not return it, so gave me note. The note given on June 1,
184 1867, was given at my house; family was present. I gave him money for it at my house; families present. Gave the $326.80, less interest from June 1, 1867, to March 1, 1869; no security; don't know what he did with the money. The note made December 20, 1867, was made at my house; family, Mrs. Clapp, and perhaps his son, Fletcher, were present. Gave him part money and part bonds at my house; no security.

Don't know what he did with the money. With all the money I let him have I supposed he was going to buy some land or something of that kind.

Int. 103. If you then supposed that Henry Clapp was about to buy land, what land was it, and what steps had been taken for its purchase?

(Objected to as immaterial.)

Ans. I was not informed as to particulars. I did not care about the particulars. I knew that if the money was not invested properly my daughter would let me know it.

All the notes must have been given at my house, and I suppose my family was present.

For the note given January 1, 1869, I can't say whether I gave all money or part bonds and part money. I took no security; supposed the lands would be purchased in the name of some reliable person; did not wish to know when I delivered the money and bonds into Henry Clapp's hands. I may as well say that as anything.

I deposited the notes with Mrs. A. L. Haskell for safe keeping.

185 Int. 113. Did you ever sign any note or other writing, conditional or unconditional, for the payment of money to Henry Clapp?

(Objected to.)

Ans. Can't recollect.

Int. 114. Did you or not sign notes, payable to Henry Clapp, to the amount of $6,000, and was there not some condition expressed in those notes?

(Objected to.)

Ans. No, sir; I never signed any such thing.

Int. 115. Did you not at some time sign your name to some sort of writing whereby you in substance agreed to pay to Henry Clapp some amount of money on condition of your being successful in this suit?

(Objected to as leading.)

Ans. No, sir.

Int. 116. Did you ever enter into an agreement in writing of any character with Henry Clapp or with anybody for him?

Ans. Don't recollect of anything, of any character, except I lease him the house he now lives in.

Int. 117. Did you ever agree verbally or in writing to pay, conditionally or otherwise, anything to Henry Clapp or to anybody for him, except as heretofore stated?

(Objected to.)

Ans. Have agreed to pay store debts for him.

Have never agreed to deed this land to anybody if I get it; have

not agreed to give anything to anybody on condition of winning this suit.

186 Cross-examination:

States the agreement between himself and Henry Clapp as given before.

When the deed was made I gave to Henry $1,000 in Lee county bonds, of $100 each. The bonds that I gave him before were U. S. bonds—five-twenties, I think. I gave then also a $1,000 note signed by Sherman Shaw & Son, which note I bought back soon afterward.

Witness explains that when he gave testimony the other day he was tired and sick, and upon consideration he deposes as above.

Int. 6. At what price did you repurchase the note made by Mr. Shaw and others?

(Objected to.)

Ans. I paid face and accumulated interest.

I let Clapp have the bonds at their face value, with accumulated interest, which was their market value.

Mrs. Haskell is widow of Geo. E. Haskell, of Lee Center, and is my daughter; has been a widow since 1866. She lives in Lee Center, about twenty rods from my house.

Int. 12. What are her pecuniary circumstances?

Ans. I have no means of knowing definitely. She has real-estate bonds, stocks, and deeds within my knowledge to the amount of about $20,000.

When, in Int. 109, I used the words "I did not want to know whom. I may as well say this as anything" I was very tired, having been examined for 4 or 5 hours, and was irritated by having my business made public. I said the words without thought,
187 and did not think it would be taken down.

JOHNATHAN N. HYDE sworn:

Am recorder of deeds in Lee county, Ills. This book is Book "M" of Deeds of the records in my office. On page 525 and 526 I find recorded a deed from Jason Clapp and Cecilia E., his wife, to Ruggles W. Clapp, of date Nov. 28, 1855, acknowledged same day before John A. Walker.

Certificate of acknowledgement read. (Objected to.)

Deed purports to convey northwest quarter of southwest quarter and west half northwest quarter section 34 and northeast quarter of southeast quarter section 33, township 21 north, range 11 east, of fourth principal meridian; also undivided one-half of east half northwest quarter section 33 and of the east half southwest quarter section 28, township 21, range 11 east, of fourth principal meridian; purports to have been recorded; nothing showing filing; date of instrument immediately preceeding deed is November 13, 1855, and succeeding date is December 1, 1855; deeds not recorded in order received. After this deed three-fourths of a page is left blank; ex-

hibited the record of a mortgage dated December 4, 1855; deed read in evidence.

LOT CHADWICK sworn:

I have never had possession of an original mortgage from Clapp to McLean.

188 MATIRN L. ARNOLD sworn:

Live in Amboy, Lee county; know Ruggles W. Clapp and McLean; have been acting as agent for McLean in all his Lee county business. I had in my possession a certificate purporting to be an abstract of title to this land signed by Isaac Boardman; first saw it 9 or 10 years ago. I had it 5 or 6 years. I gave it — Goodwin & Williams, attorneys. Mr. Chadwick and Mr. Clapp saw it at Chadwick's house in winter of 1868. Clapp and wife wanted to keep paper; don't know whether they copied it or not.

(Shows witness a paper.)

Can't say that I have seen that. The papers were there. Something was said about making a copy, but did not see any made. I took papers all away. I saw them a couple of weeks ago in Chicago.

Cross-examination:

I went to house of Chadwick at request of Henry Clapp to compromise the claim of McLean. Something was said about buying land from Clapp. I was the purchaser of the mortgage Clapp wanted to compromise. Cephas Clapp had a lawyer examine records, who found that the McLean mortgage was ahead of the Jason Clapp claim. I think Mr. Chadwick said nothing about that claim. Chadwick asked Henry if he had the mortgage released, and told him to get one and compromise the matter the best way he could; am certain Chadwick saw mortgage; had another conversation soon after to about the same effect; saw Clapp take a paper into
189 another room; think it was abstract. Henry said he would want me with that paper in some suit.

Redirect examination:

Chadwick said he cared nothing about the Jason and Edwin Clapp claim; that he considered it of no consequence; don't know as I saw the deeds offered in evidence when there; don't think I saw Clapp's wife.

LOT CHADWICK recalled by complainant:

I was present during a portion of conversation testified to by Arnold. Arnold said he had an abstract of title to lands in McLean mortgage. I think the conversation was about the McLean mortgage alone. All I remember distinctly is that there was such a mortgage and the notes had been delivered up and the mortgage was worthless; heard nothing about Jason and Edwin Clapp or

about a lawyer. I am a little deaf and could not hear all they said. There was no conversation about the purchase at that time. I did not think about buying the land until about a week before I bought it.

Deposition of Henry Clapp, Read by Complainant.

Born June 25, 1823; am a farmer; live — Bradford township, Lee county, Illinois; have known Lot Chadwick 24 or 25 years; Edwin Clapp since I was a boy; Mary M. Clapp the same; am acquainted with the lands in controversy in this suit and lands adjacent.

Int. 4. State, if you know, the circumstances under which
190 said lands were purchased from the United States and how it happened that the title to them or any part of them became vested in Jason Clapp or Edwin Clapp.

(Objected to by defendants.)

Ans. I bought one land warrant of Louis Clapp for a quarter section, another of J. L. Crow for a quarter, another of J. F. Clapp for a quarter, as security for lands I had entered in their respective names, as mentioned here. I borrowed about $600 from Jason and Edwin Clapp, and as I was involved in New York I had the deed made to them.

Int. 5. Did you ever have a settlement with them, &c.?

(Objected to.)

Ans. Some time in November, 1855 or 1856, I sent them $650—all they asked—and they, at my request, made a deed of said lands to Ruggles W. Clapp. There was a mortgage made to one McLean by Ruggles W. on this land for about $6,000, given for goods for me. The goods were sold in Amboy, and most of proceeds went to pay McLean; sent McLean's money to Ruggles. I applied to Ruggles to get the McLean mortgage released; can't say when. Edwin Clapp did not tell me then what had become of the two deeds. August 5, 1856, after making McLean mortgage, I received $2,600 from my father, Ebenezer, and gave no security for it. R. W. Clapp was indebted to Ebenezer Clapp and I owed R. W. Clapp. Ebenezer accepted my note instead of R. W. Clapp's. I made no agreement that the deeds should be deposited for security for this debt and knew nothing of such a proposition being made. At the time this debt was
191 created said Ebenezer lived at Lee Center, Lee county, Illinois, and for some time thereafter. Ebenezer Clapp never called upon me for the payment of this indebtedness.

I saw said Ebenezer afterward in the office of Jason and Edwin Clapp, in Massachusetts. Edwin Clapp said to me that when my father got back to Franklin county, Massachusetts, he had better make his will. At my father's request I went with him to Amherst, Mass., when Edward Dickinson made his will, which he signed in presence of two witnesses, citizens of Amherst, in which will he bequeathed to myself all notes and obligations that he or Edwin Clapp

held against me as my share. (A statement of other portions of the will.)

I have no knowledge of Ebenezer making another will or changing this or making any other disposition of my note. He has never told me that he had any knowledge of the defense set up in this suit.

I have had custody and possession of said lands ever since they were sold by the United States, living on them, farming them myself, and renting them. On last day of February, 1869, I sold said farm to Lot Chadwick, who has had possession of it ever since.

Since said sale I have had nothing to do with occupancy of said place, except the lease of a house and pasturage for a cow. From 1861 to 1866 I used Cephas Clapp's name, conveying the idea to the public that he was agent for Edwin Clapp, merely to keep my creditors from taking my property until I could pay them.

192 He paid taxes under my direction and with my money two or three times.

I received deed of said land from R. W. Clapp in 1866, I think, which I had recorded. Ruggles W. was in New York when he signed said deed and his wife was in Chesterfield, Mass. (Show him paper marked Exhibit "B.") This is the deed I referred to in my last answer. Said deed has not been changed since that time. Said deed was delivered to me when it was made in New York. After I received this deed I had a conversation with Edwin in Pittsfield, Mass. I told him I had got a deed to all my land. He said he was glad of it. I asked him where the two deeds were. He said they were with Cephas Clapp, in Illinois, and that I could call there and get them.

In 1866, I think, I borrowed $4 of Edwin. Soon after he sent my daughter, Mrs. Shaw, $50 and me $50, and some time thereafter $35, and I then gave him my note for $139; was no security asked for and none given. Edwin never paid any taxes on the land or made any repairs thereon.

The consideration for my farm was paid me by Lot Chadwick in manner following: I owed him $6,000, which he cancelled. He was to pay all recorded judgments and attachments, same as stated by Chadwick.

I was present at a trial of a suit here in Dixon before Lee circuit court, where Ebenezer Lee Clapp was plaintiff and Ruggles W. Clapp was defendant, in year 1866 or 1867; am not certain about date. At that time Cephas Clapp was a witness for E. L. Clapp. E. L. Clapp assigned judgment to Cephas.

193 Cross-examination:

My father made his will in November, 1866; made no memorandum of it and last saw its contents in Mr. Dickenson's office; saw it afterwards in my sister's house; father had it; the first year the lease I had from Chadwick was verbal; second year it was written.

Cross-int. 9. What did you do with the $1,000 note which you say Chadwick gave you?

(Objected to.)

Ans. I sold it back to Chadwick for principal and interest. While I had it kept it in my drawer and pocket. I sold it back because I was afraid I should have some trouble in collecting it.

Cross-int. 12. What difficulty did you anticipate?

(Objected to.)

Ans. One of the firm had threatened to shoot me, and my daughter told me that her husband would do so if I came on any of their land. The whole Shaw tribe are bitter against me. That is why I anticipated trouble?

Cross-int 13. What did Chadwick give you for that note—money or property?

(Objected to.)

Ans. He gave me money; don't know who was present.

Cross-int. 15. What did you do with the money?

(Objected to.)

Ans. Used some of it in living. I decline to tell where rest of it is; my business interest would not permit me to.

194 Cross-int. 17. How much of the money you say Chadwick gave you did you spend for living, and to whom did you pay it?

(Objected to.)

Ans. Can't say.

Cross-int. 18. Where are now the bonds you say Chadwick gave you?

(Objected to.)

Ans. I refuse to state.

Cross-int. 19. Are you yet their owner?

(Objected to.)

Ans. I decline to state.

Cross-int. 20. Did you ever part with either the possession or ownership of them; if yea, to whom and when?

(Objected to.)

Ans. I did part with the possession of them to raise money, but refuse to state to whom and when. They were drawing interest.

Cross-int. 22. Did you present any of said bonds for the payment of either the principal or interest?

(Objected to.)

Ans. No, sir.

Cross-int. 23. Where did you keep them?

(Objected to.)

Ans. I refuse to state.

Refuses to state several times what he did with bonds or money, as it would injure his business.

Some one saw me in possession of said money and bonds.

Refuses to state who.

Cross-int. 37. When, where, and to whom did Chadwick pay for you $30 for a stove?

(Objected to.)

Ans. I can't say.

195 Cross-int. 39. When did Chadwick pay Trowbridge $177 for you?

(Objected to.)

Ans. Some time in 1867, 1868, or 1869.

Cross-int. 41. Where are the deed- from Jason and Edwin Clapp to Henry Clapp?

(Objected to.)

Ans. Last I saw them they were in Judge Eustace's hands. I employed Wm. E. Ives to answer the cross-bill of Edwin Clapp for me. I have never been in the office of Eustace, Barge & Dixon since that firm was formed. I swear that I employed William E. Ives to answer said bill, and I decline to answer any further.

Cross-int. 54. Have you any interest in the lands involved in this suit?

(Objected to.)

Ans. No, sir.

Cross-int. 55. Have you ever had any agreement with Lot Chadwick by which you are to regain any part of said lands or any money upon any condition whatever?

(Objected to.)

Ans. No, sir.

Cross-int. 56. Have you ever heard anything about Lot Chadwick leaving by deed or will any portion of this land to you?

(Objected to.)

Ans. No, sir.

Cross-int. 59. Have you not stated to R. W. Clapp and E. Lee Clapp, at or near Lee Center, last October or November that you held Chadwick's notes to the amount of $6,000, to be paid if he won this suit?

(Objected to.)

Ans. No, sir.

Cross-int. 61. Have you not at any time since the first of October last shown to E. L. and R. W. Clapp an agreement between

196 you and Lot Chadwick?

(Objected to.)

Ans. I decline to answer.

Cross-int. 62. If you did exhibit such notes or agreements how much was the aggregate amount?

(Objected to.)

Ans. Decline to answer; decline to answer these questions because I have answered them before.

Redirect examination:

I never had any interview with E. L. and R. W. Clapp in which I showed any notes or agreements with Lot Chadwick. I did not understand the questions of opposite counsel.

Recross-examination:

Why did you not understand said questions as asked by me and did understand them from others' counsel?

Ans. Through weariness.

Int. How long a time intervened between the two questions?

Ans. Decline to state.

Re-redirect examination:

Int. Did you at any time after said questions were asked say you did not understand them?

Ans. Yes, sir.

It was then ordered by the court that HENRY CLAPP be produced for cross-examination, who testified as follows:

Ques. Please state what you did with the money that Chadwick gave you for the Sherman Shaw note—what you did spend for living.

(Objected to by complainant. Overruled. Exception saved.)

197 Ans. I gave it to my wife; don't know how much; gave it her at the farm; can't tell time; nobody present but wife; don't know who saw me with the money besides Chadwick; gave it to my wife for safe keeping; don't know what she did with it; don't think I paid any bills with this money; haven't seen it since. I gave the Lee county bonds to my wife.

Ques. When and where did you receive the ten Lee county bonds from Chadwick?

(Objected to. Overruled. Exception saved.)

Ans. I received the money at his house when I gave him deed.

Ques. How soon after did you deliver those bonds to your wife?

(Objected to. Overruled. Exception saved.)

—. Don't remember; dismissed everything from my mind. Albert Bodine was present when I received money and bonds; don't know where bonds now are; don't know who owns them; suppose I am not the owner, for I told my wife to get them cashed, which she said she did. She gave me the money as I wanted it along from

time to time to pay bills with. No one but Chadwick and my wife saw me with money and bonds. I never had or showed any written agreement between myself and Chadwick to R. W. and E. L. Clapp. (Letters shown witness.) These were written by me.

Complainant here offered in evidence a deed from Ruggles W. Clapp and wife to Henry Clapp, dated January 10, 1868, recorded January 30, 1868, in Book 17, pages 51, 52, 53, conveying the premises in controversy; also the deed from Henry Clapp and
198 wife to Lot Chadwick, dated March 1, 1869, recorded March 3, 1869, in Book 14, page 547, conveying said premises.

Deed from Ruggles W. Clapp and wife to Henry Clapp and acknowledgements of same.

Close of complainant's evidence.

Defendant's Evidence.

Letters from Henry Clapp to Edwin Clapp; one dated October 2, 1867, the other dated August 4, 1867, being same referred to in Henry Clapp's testimony and in Cephas Clapp's deposition, referred to as Exhibits "F," "A," "G." Reading of the same objected to by complainant. Overruled. Exception saved.

"Thinking you would like to know how the sale of the 80 acres to Hurlburt came on, I write you. About a month ago I delivered all my small grain to Cephas Clapp as thrashed. * * * He is to settle my taxes next week. Cephas advised me to sell the 80 and build me a house and buy stock, but I refused. I want to pay my taxes and as many debts as I can out of this year's crop, and then sell the 80 and pay my father, and for no other purpose would I sell it. I sent a quitclaim deed for Wood to sign so you could make a warrantee deed to Hurlburt, as he will take no other. I send you Wood's letter. I think if Woodbridge will not sign that you had better put the notes which you hold against him into judgment and send the transcript of judgment here to be recorded, and that will hold the land to you in spite of all Woodbridge can
199 do, if he should undertake to be dishonest. When I saw you in Pittsfield I did not suppose matters stood so Wood could hurt me. But I am not afraid of him. As I understand the matter, when the deeds were returned to you they were partly recorded, but recorder's name was not signed because they were imperfectly acknowledged. I supposed they were all right five or six years ago. I got Mr. Smith to look the matter up and he said it was all right. Cephas says half of the title to my land is in Wood and half in you. I shall write soon when I will send you some money to apply on the note I owe, and will do the best I can to pay you all up this fall. Judge Eustace, who is our circuit judge, told me that you could hold the land in spite of Wood. With respect to what I owe my father there will be no trouble, as you hold in your name on the records in Dixon land enough to nearly pay double; but I can't rest easy until I have my father paid."

LEE CENTER, *August* 4, 1867.

I have made arrangements with Cephas to pay my taxes after threshing. You are mistaken in regard to my intention to wrong you and father. To prove this I will sell the 80 spoken of before and apply onto father's debt. The 80 will bring $2,400, and I want you to write how much the remainder can be settled for. I am anxious to have the affairs with father settled up. I will do whatever you think right.

P. S.—I leave all to your good honor and judgement, and hope that this matter may be settled so I can have more of independence of feeling in regard to my brothers and sisters.

200 "The money you sent to Mary and that I will send you when I sell my corn, in November. Of course I should have Cephas attend to the sale of the land and forward you the money."

Stipulated that John V. Eustace had not been judge of circuit court of Lee county, as stated in Henry Clapp's letter, for several years prior to date of said letter.

A letter from Ruggles W. Clapp to Edwin Clapp, being referred to as Exhibit "E" in the deposition of Cephas Clapp. It was agreed that owing to the peculiar appearance of this letter the original may go to the Supreme Court.

A letter from Jason Clapp and Son to Henry Clapp, being same as referred to in deposition of Cephas Clapp as "Exhibit E," dated Pittsfield, November 9, 1860:

"The time has arrived when something has to be done in regard to the land you now occupy. We have decided to appoint Cephas Clapp our agent in Lee county, and any arrangement you make with him will be satisfactory to us."

Lease made by Cephas Clapp, as agent for Jason Clapp & Son to Allison Tennant and John Tennant, dated May 1, 1866, and referred to in Cephas Clapp's deposition as "Exhibit D," wherein said Cephas leased to said Tennants a portion of the lands involved in this suit, said lease being from May 1, 1866, to December 1.

A note referred to in Sherman Shaw's deposition as "Exhibit A," wherein Sherman Shaw, Son & Co. agree to pay, one
201 year after date, to Lot Chadwick, $1,000, with interest at ten per cent. until paid, for value received. Upon the note were the endorsement- of the payment of $100 interest, paid until July 16, 1871; 1871, received on the within * * * hundred dollars ($600.00).

To the reading of letters, lease, and other papers complainant objected. Overruled. Exception saved.

Deposition of Benjamin F. Shaw.

My age is forty; occupation, an editor; live in Dixon. I was clerk of circuit court from 1860 to 1868. Between years 1864 and 1868 Henry Clapp, with some lady with him, desired me to record a deed. I refused to do it on account of the imperfections. I told

him that if I put it on record I should put interlineations and erasures as they appeared. He did not want that done. I think they wanted it recorded as a perfect deed. I think either grantor or grantees was erased and another inserted; think some Clapp's name was erased and another Clapp's name put in; think erasures were in a different handwriting; don't know whether that deed was ever recorded or not; think the lands were in Lee county; never knew but one Henry Clapp in Lee county; think Mr. Clapp took deed away with him.

Cross-interrogatories:

I am only certain that either the grantor's or grantee's name was erased. There is a possibility that I may have been mistaken
202 in the man. Not many months elapsed until my attention was called to it again.

Redirect:

I addressed the man who presented the deed as Mr. Clapp, I presume. I thought his name was Henry; am not positive about it. I supposed he lived at or near Lee Center; should think he was about 50, thick set, and of medium size.

Recross-interrogatories:

I intended to describe the man who handed me the deed; don't remember that at the interview I addressed him by any name whatever.

Deposition of Alva B. De Wolf.

I am 56 years old; am a farmer; live in Lee Center township, in this county; have lived there 20 years; about one and a half miles from Lee Center village. I know Henry Clapp. He lived in Bradford township. I am acquainted with a portion of the lands upon which Henry lives—the west portion. My means of knowledge are by passing over said place. My opinion is that — are about 600 acres of land in the farm, and that is the general opinion of the neighborhood. The place is about two miles from me; don't know who has exercised control over it for the last 15 years. They have been several, I think. I know only from common talk; should think Cephas had from common talk. (Objected to.) Can't recollect dates. I should think he rented the place or a portion of it and collected the rents. I should think it was 10 or 15 years *of* ago I first learned this.

203 Int. 17. What for the last 15 years in the neighborhood of these lands has been the understanding with reference to the ownership?

(Same objection.)

Ans. Think general impression has been that they were owned by a Clapp East. There have been different opinions; should think the average value of these lands would be about $35 per acre; can't

say accurately, not knowing amount of wet land. In March, 1869, they were worth about $3 per acre more than now. I know Lot Chadwick. He lives in village of Lee Center; has lived there 12 or 15 years; lives 4 or 5 miles from these lands by the road. He was postmaster at Lee Center some time from 1860 to 1870.

Int. 23. Did you ever learn of any litigation in reference to crops grown on this place, and what did you learn about it?

(Objected to.)

Ans. Think I did; can't state when. It was before 'Squire Shaw, about two years ago. The plaintiff obtained the grain claimed by him, raised by him on the place; think there was other litigation about same matter before.

Cross-interrogatories:

I can't give date when Cephas Clapp rented these lands; think he rented them to one Joseph Parks; learned this from common talk; don't know of his renting to others; think he did; can't tell names; don't know of his collecting rents from said lands. The first thing learned that led me to believe Cephas rented these lands was a store trade by which Wheat & Shaw were to receive a
204 portion of the rent. Sherman Shaw told me that Cephas Clapp received the rents. I can give no statement from my own knowledge of any fact that leads me to believe that Cephas had control of the place.

Testimony of B. F. Shaw.

I have become satisfied that Henry Clapp is the same man who brought me the deed to file and referred to in my deposition. I saw the same man with Judge Eustace and B. H. Trusdell.

Cross-examination:

State what this paper purports to be (shown a paper).

It is a quitclaim deed from R. W. Clapp, dated January 10, 1868, acknowledged January 20, 1868, recorded at Dixon January 30, 1868, in Book 14, page 51. It is not same deed I refused to record. See no alterations. The grantee's name may be written in a little different ink.

Deposition of Albert Z. Bodine.

Age about 41; am a justice of the peace; live in Lee Center, Illinois; have lived there 23 years. There was a suit before me a year ago last fall about the crops on this place. Lot Chadwick was plaintiff and Constable Bell defendant.

(This was objected to by plaintiff's counsel.)

Int. 4. Do you now remember a trial before you as much as four or five years ago, with which Cephas Clapp had some connection and in which Henry Clapp was a witness and Daniel Frost and B.

H. Trusdell were attorneys? If yea, state who were parties and date.

(Objected to.)

205 Ans. Dr. Gardner was plaintiff and Henry Clapp defendant about six years ago. About the year 1862 there was a case concerning crops on this land. Cephas Clapp was plaintiff and Chase Strable defendant.

Int. 6. State whether that was a jury trial and the property involved, and when it was tried.

(Objected to.)

Ans. It was not a jury trial. The property involved was some grain. Trial was held under Masonic Hall, in Lee Center. Think grain was grown on the Clapp farm.

Int. 8. Was Henry Clapp a witness and what did he swear to?

(Objected to.)

Ans. Don't remember. Trial was held about 20 rods from residence of Chadwick and post office. Think Chadwick was postmaster then. In year 1867 I went with Henry Clapp to the house of Cephas Clapp to copy a deed or deeds in December.

Int. 13. On reaching his residence did you see the deeds referred to? What deeds were they? What was said by yourself, Henry Clapp, or Cephas while there in reference to said deed?

(Objected to.)

Ans. I did. My impression is that R. W. Clapp and wife were grantors and McLean grantee. Can't state what was said, only that Henry Clapp said he would take them and he did take them. Were two deeds. Think I copied one nearly. Found Cephas at home. His wife was there. I was there two or three hours. Cephas came to the door when we were leaving. Cephas was out about an
206 hour at work around the barn and shed. He came in before we went away. Henry Clapp took the deeds and said he would have the originals instead of a copy. Think he said, "By God, I will have the originals instead of a copy." We went as far as post office with Cephas Clapp in his sled, about 80 or 100 rods from Cephas' house. I think Cephas went back home from there. Henry went into Chadwick's house and I went in there for a moment and then went to my shop. Henry Clapp was at that time the reputed son-in-law of Lot Chadwick. Between death of Henry's first wife and the second marriage it was less than a year.

Cross-interrogation:

Think Lot Chadwick was present at one of the trials—the one in which he was plaintiff. When he was postmaster he discharged his duties in person generally.

Int. 3. What has been population of village of Lee Center for last five years?

(Objected to.)

Ans. About 150; of the township of Lee Center about 800 or 1,000. Mr. Chadwick spent most of his time at the post office.

Redirect:

Chadwick kept his post office at his residence.

Deposition of Cephas Clapp.

My age is 58; residence, Lee Center village, and occupa-
207 tion, farmer; have lived where I now live for 16 years. I know the lands in controversy in this suit; think the average value of these lands on March 1 was from $49 to $45 per acre. I acted as agent for Edwin Clapp, of Pittsfield, Mass., who gave me a letter in Pittsfield, November 9, 1860, showing that I was his agent to take charge of these lands, which letter I showed to Henry when I got home. (Shown a paper marked Exhibit "C.") Think that is the letter. When Edwin gave me the letter he said he held the deed for thus farm in trust for Ebenezer Clapp.

Int. 4. Do you remember what Henry Clapp said when you showed him the letter?

(Objected to.)

Ans. Think he said it was all right. I sanctioned the leases of said lands. Sometimes those who leased came with Henry Clapp, and sometimes alone. Henry was to get a lease drawn up by some competent person in favor of Edwin Clapp, from which all the leases were to be drawn. Before leasing the lands I consulted with Henry. I commenced acting in 1860 and acted to 1868. I had to look after the rents, to get money to pay taxes and to buy lumber to fix the fences; that was a special request from Edwin Clapp. I had the taxes paid until 1866 or 1867; got the money by selling grain from the place and from selling leases; think I obtained posts, rails, and lumber for repair of the fences several times. One time was May 15, 1865. I took the rent — grain at threshing time and disposed of it from 1860 to 1867.

208 Int. 23. What did you do, if anything, in reference to Clapp's trading at stores?

(Objected to.)

Ans. I used to let leases go to secure store bills. Whenever a lease was disposed of I was consulted. I never acted as agent for any one but Edwin Clapp, I think. When coming from the farm I several times called at Chadwick's with messages from Henry to him; brought once a quarter of veal; think I said to him, "I am hauling grain from the farm; Mr. Clapp sent this veal to you;" think he knew I was concerned as agent for his farm. I have had lease and tax receipts of this farm, but Henry Clapp got them from me.

Int. 31. What induced you to let him have them?

(Objected to.)

Ans. He wanted to keep Edwins Clapp's papers all together. (Shown a paper marked Exhibit "D.") This came to my possession May 1, 1866. Lands described in this are seventy acres of S. E ¼. sec. 33, T. 21 N., R. 11 E., 4th P. M.; suppose they are a part of lands in controversy. I came by this lease in being agent for Edwin Clapp; am not positive that I was present when it was executed; have known lands for 15 or 20 years.

Int. 38. Who, during that period of time, in the village of Lee Center has been the reputed owner?

(Objected to.)

—. A man by the name of Clapp, in the East; have heard statements of Henry as to who was owner of said lands.

Int. 4. Do you remember a transaction in reference to a proposed sale of some of said lands to one Hurlburt? If yea, when was it, and what, if anything, did Henry Clapp say to you in reference thereto?

(Objected to.)

209 Ans. I do; think first conversation was in 1865 or 1866. He spoke to me about selling said land; asked me what I thought about Edwin making a deed; told him he would do it if the money went to pay a note held by Edwin against Henry for Henry's father. Henry said the money should go to pay said note and should go through my hands. Henry said he would send him to me to make the sale.

Int. 41. State, if you know, what purpose Edwin Clapp had in view in appointing you his agent.

(Objected to.)

Ans. Think he told me his object was to keep up the taxes and see that his security was good. I examined the records of these lands myself; think it was in 1864. I had an abstract of title before that; think I examined them again in 1867 with a friend who was used to that business. I learned at each of these times that a deed from Jason Clapp to Ruggles W. Clapp had been recorded; have seen two abstracts to this land; had but one.

Int. 49. Can you state with any more particularity as to when or how you first learned the fact that the deed from Jason Clapp to Ruggles W. Clapp was recorded?

(Objected to.)

Ans. Can't tell date; think Edwin sent me the deed to see if it was recorded; sent me two deeds from 1864 to 1866; think Jason Clapp and wife were grantors in one and Edwin Clapp and wife in another. Ruggles W. Clapp was grantee in each. Henry Clapp stole them out of my house in February, 1868. A. Z. Bodine was with him.

210 Int. 55. What did Henry Clapp first say to you the day he took those deeds in reference to his taking them? State all that was said and all that was done in reference thereto.

(Objected to.)

Ans. Henry came to my house early in the morning and wanted to take the deeds down to Bodine's to have him copy them. He wanted to give deed of whole farm to Edwin Clapp. I told him he could not take them out of the house. I told him Mr. Bodine could come up to my house and copy them. I was to be ready when he got them copied to go to Dixon with him and have it put on record. Bodine came; gave him deeds. He sat down and went to writing.

Int. 57. What did you say, if anything, to Henry in reference to those deeds in presence of Bodine?

(Objected to.)

Ans. Nothing in particular. Henry said the deed must be taken that night and recorded anyhow. They came about ten o'clock and went away about four. When they left the house I had driven up to the door. They got in the sled and went to Chadwick's house; said his wife was there, and he would have the deed executed, and after I did my chores we would go to Dixon and have it recorded. I went back home and found the deeds were gone; went back to Chadwick's. They said Clapp had gone home; went to Bodine's; asked him if he had the deed ready. He said no; said he waited a good while at Chadwick's for them, and finally came away. Then he told me about Henry taking the deeds. Two or three days
211 afterwards I went to Henry's house and asked for the deeds. He told me I could not have them.

Int. 63. After Henry had taken those deeds did you learn in any way that he and his wife had been to Dixon seeking to have a deed recorded? If yea, when and how did you learn it?

(Objected to.)

Ans. I did; think it was next afternoon after they were there; from Mr. Shaw, the recorder. I have known Henry Clapp for 20 or thirty years, and his habits had been poor, dissipated, and reckless; got intoxicated, crazy from effects of liquor, so that he would smash in people's doors, &c.

In 1865 or 1866 he smashed in Squire Haskell's glass door. He broke the lock to my door. Haskell lives 10 or 15 rods from Lot Chadwick. Haskell was son-in-law to Chadwick.

Henry Clapp's first wife died in spring of 1866 or 1867; am not certain of date. The financial standing of Henry Clapp for last 15 years has been very poor; have observed no improvement since 1866. I base my judgment of his financial standing upon the fact of people coming to me and asking me if certain leases were good, if it would do to trust him, &c. Since 1866 he has twice applied to me for money. In summer or fall of 1868 or 1869 he wanted $1,000 or $1,200 to pay Chadwick with; said it was all he owed him. Since 1866 he told me he was going East. He wanted me to let him have some money, as he said he had not enough to go on; said he had $34 or $35; said he sold a cow and pig to get it. I told him
212 that was enough; said he would try it; it was a little while after he was married.

Int. 77. Do you remember a trial before one Bodine in Lee Center wherein one Strable was a party and Henry Clapp was a witness? If yea, state as near as you can when that trial was held.

(Objected to.)

Ans. I do; it was some time in 1862 or 1863. Henry said in his testimony that the land belonged to Edwin Clapp. The land was assessed in different names while I was agent; some in J. F. Clapp's name, some in one Crow's, some in Lewis Clapp's, and another—don't recollect the name; think none of it was assessed to Henry Clapp; think I know handwriting of R. W. and Henry Clapp; they have written various things and handed me; I have seen them write. (Shown papers marked "E," "F," and "G.") The handwriting of signature to "E" is R. W. Clapp's; handwriting to "F" and "G" is Henry Clapp's handwriting; the body of "F" and "G" is written by Henry Clapp.

Cross-interrogatories:

By the lands in controversy in this suit I mean the Clapp farm, in Bradford township, Lee county, Illinois; its Government description is southwest quarter of section 28, northeast quarter of section 33, northeast quarter of southeast quarter of section 33, northwest quarter of southwest quarter of section 34, west half of northwest quarter of section 34, east half of northwest quarter of section 33, all in township 21, range 11. This is answered from a tax
213 receipt of 1864; think I have no other written evidence, except letter marked "Exhibit C," that I was appointed agent by Edwin. I suppose Jason Clapp and son were the lessors in the lease I made out; think I have seen such lease; think two men by name of Tennant were lessees in one; am not certain; think those men occupied lands under the lease. The leases were all to be made out with Jason Clapp & Son as lessors; don't remember of any being made any other way; think I signed some of them and Henry some; think I signed some; can't give any names. Mr. Clapp and I had an understanding about the writings. I think I must; think I did sign one such lease. I stated in interrogatory 15th that a form of a lease was to be made out in Edwin's name because Edwin did all the business for his father. I kept no particular book account. I kept the general run of them on a piece of paper. What money I did pay out on the place was to go to Henry Clapp and family as long as I thought Edwin's security was safe. Value of lands in 1860, irrespective of improvements, was from $18 to $25 per acre; has not been lower than that since 1860. One part of my employment was to see that the taxes were paid and land was not so depreciated in value that Edwin would be unsafe.

The rest was to see that it was not squandered away and the family destitute. I had no orders to spend any money that did not come off the land. The transaction about the veal was in the summer of 1867. I let Henry have his tax receipts and lease
214 at different times; last time in winter of 1867 or 1868. I can tell only from memory the time when Edwin Clapp gave

me the two deeds; think it was 1864 or 1865. In February, 1868, the post office was kept in an "ell" of Chadwick's house. In telling about Edwin sending me those deeds, when I said "I might be mistaken, however; think that was it," I did not mean that I was mistaken about the deeds being sent to me or the parties to them; remember about a suit being commenced against R. W. Clapp by attachment at suit of E. Lee Clapp, in the Lee circuit court, in 1868 or 1869. Mr. Shaw, the recorder, told me that Henry Clapp and wife had wanted a deed recorded, and there was some informality about it; did not tell me the lands had been attached as property of R. W. Clapp; think that suit may have been commenced before that; am not certain. Mr. Haskell told me he smashed his door; fix the date because Henry lived in town at that time. It may have been in 1865, 1866, or 1867; not in 1864. People have come to me as lately as 1868 to enquire about his financial condition. First time I saw Henry was in Hartford, Connecticut, 27 or 28 years ago. I think he was doing nothing then; think next saw him in 1850 or 1852, in Lee Center; heard he had broken up in the East; burned out, he said. When he came to borrow $1,100 or $1,200 he was sober enough to walk straight and seemed to know what he was doing; as able to do business as I most ever saw him. I fix the date of this conversation by him telling me that he then borrowed some money of Chadwick to pay Lee Clapp. It will date from the payment of Lee Clapp's debt. He was as sober as usual
215 when he told me about going East.

Int. 48. Look at exhibit marked "E" and state whether it appears to have been torn or cut off below the signature R. W. Clapp and has been cut or torn through a line of writing.

(Objected to.)

—. It appears to have been so dealt with; don't know who cut or tore it; can't tell when I saw the paper before, or whether I ever saw it or not.

Deposition of Richard C. Clark.

Age, 65; occupation, mail-carrier; live in Lee Center village; lived there 15 or 16 years; different occupations while there were farming and clerking in a store. Village contains between one and two hundred inhabitants; have known Henry Clapp about 14 years, during which time he has been in the habit of being drunk quite often. I am scarcely able to tell, but from appearances should think he had generally been hard up. I know the place on which Henry Clapp has lived; can't say positively, but think Chadwick for last year or two has had the management of it; before that, Henry Clapp. I have heard, but don't know, that Cephas Clapp has has something to do with its management.

Int. 10. State, as near as you can, when and where you first heard it.

(Objected to.)

—. Can't recollect when; think three or four years ago; have

known Lot Chadwick fifteen or sixteen years, during which
216 time he has been very accurate in business; drove Henry Clapp and wife to Dixon and back one winter some four or five years ago.

Int. 15. Who requested you to take them, and at that time what was said by you and that person in reference to taking them?

(Objected to.)

—. Henry Clapp. I did not want to go because it was cold and late. He insisted and I went. Henry started from my house; his wife had started on ahead. I took them to the Nachusa House. I heard two or three days afterwards that he had taken two deeds from the table of Cephas Clapp. (Objected to.) Heard it at Lee Center; did not hear it before I took them to Dixon.

Int. 21. Who, prior to the time that Mr. Chadwick had the management of that farm, had you regarded as the owner of it?

(Objected to.)

—. Can't say positively. Judging from common talk, Henry Clapp owned a part and the balance was in the hands of a man East.

Deposition of Ira Brewer.

Age, 51; farmer; resided in Bradford township for 28 years; known the Clapp farm; cannot say who for ten years has had charge of it. One year I heard Cephas Clapp had. It is difficult to state what the general understanding in the neighborhood has been as to ownership. My impression was that a
217 whole or a portion of it belonged to Jason Clapp & Son. I never understood Henry had a clear title to it; understood Jason Clapp & Son lived in Pittsfield, Mass., and that Cephas looked after their interests. I live a mile and a half from it; have known Henry about 21 years; think his reputation has been intemperate in habits; would get intoxicated as often as he could get the liquor; seen him badly affected and crazy; do not suppose he could have been trusted to any amount while I have known him.

Cross-examination:

I did not answer to the 3d interrogation; say I know the Henry Clapp farm. My personal knowledge of Cephas attending to business of that farm extends simply to once being at his place and seeing grain hauled there which he said came from that farm.

Redirect examination:

I did not say in answering the last cross-interrogatory, "The rest I know by common rumor." What I meant to say was I had heard from others.

Deposition of Sherman Shaw.

Age, sixty; farmer; resided at Lee Center thirteen years; been acquainted with Clapp farm ever since a farm; average value March

1st, 1869, about forty dollars per acre. All I know of its
218 ownership is by common report that the title was in Edwin Clapp. What I learned aside from that was from Henry Clapp and wife. My impression I heard him say so in 1862 or 1864; think Cephas had some control of it in 1862, 1863, and 1864. He was consulted by me in reference to rents; borrowed money of me to remove grain from there; general supposition is that he had control of the farm. Known Henry about twenty-five years. His habits have been intemperate in using intoxicating beverages. Sometimes quarrelsome, sometimes loving, sometimes nearly besides himself; intoxicated quite often; credit very poor; never regarded him worthy of trust; generally regarded so there. Known Lot Chadwick thirty-two or thirty-three years. His qualifications for business are good; never thought he could be overreached in business matters. Remember giving Henry one hundred dollars about 1862 to 1864 to hand to his father; said he owed it to his father. The firm of Sherman Shaw and Son, of which I am a member, gave Lot Chadwick a note for one thousand dollars three or four years ago. I paid it in 1871; only note of one thousand dollars we ever gave him. Have no reason to suppose Henry Clapp ever had that note. Chadwick's name nowhere appears in it except on the face, as I see. (Note referred to offered in evidence and attached, marked "Exhibit A.") The way I came to hand Henry $100 was this: I had avails of the farm in my hands to be paid out under the direction of Cephas Clapp and Henry Clapp's wife. Himself and wife
219 came to me; wanted I should let Henry have $100, as he owed his father, and had some little time and wanted to hand it to him from his own hands. I consulted his wife separate from him; she was to watch and see it went there. Think his father was then at David Smith's, in Lee Center. His wife reported it went there straight. I refer to his first wife. Been imprudent for last fifteen years to intrust Henry with his own or others' money on account of his being crazed with liquor. Winter of 1866 or 1867 he was not so.

Cross-examination:

That was the only time of any length. Hardly think I have seen him intoxicated this year, 1872. I think I did in 1871; cannot particularize any time that year. I did see him intoxicated in 1871; not willing to swear to five times; think more than once; can't tell time of year; saw him intoxicated in the street within last three years. He has a wife and one child named Fletcher; think he has 3 living children named Mary, Eva, & Fletcher. One of the daughters is married to E. D. Shaw, my son.

Redirect examination:

Eva is about seventeen. I believe she is in one of the New England States, and went there in 1871. It seems to me he has done nothing to support either of his daughters since 1871. Can't say I remember seeing him in 1871 when entirely sober.

220 Recross-examination:

Think I have some personal knowledge as to matters testified to on redirect examination. The knowledge that enables me to say he has not supported the daughter is knowing the time she left very destitute so far as concerned clothing and the drawing of money from the firm for her benefit.

Deposition of Erskin A. Bliss.

Age, 47; occupation, contractor; reside in Amboy. From February to November, 1866, I resided in Lee Center. Know the Clapp farm. Cephas Clapp has had control of it within last ten years by guaranteeing leases I have had and paying taxes. In 1865 I at his request paid taxes. In 1860 I took a lease of it which he guaranteed; learned he was acting for Edwin Clapp. Edwin was reputed owner of it. I heard Henry several times, the most in 1866, state that the title was in Edwin. Cephas was present two or three times. It was generally understood so in Lee Center.

Cross-examination:

By guaranteeing leases I mean Henry told me Cephas was agent for Edwin; therefore I took no leases unless guaranteed by Cephas; took five or six such, all but one in writing, signed by Henry Clapp by his own name. One lease was made to Milan Barnes, one
221 to Mr. Colton, one to Mr. Bosworth. Guarantees were verbal. Cephas said he would guarantee that I should have what the lease called for. I held them by purchase; purchased soon after they were made. Guarantee was not made when leases were. One lease was made in 1860, balance in 1866, I think. One with Milan Barnes was made in 1860; those made in 1866 were in spring; guarantee applied to all. I paid taxes on the farm in 1865 for the year 1864; was repaid by Cephas in about a month. These two things are all the transactions from which I learned Cephas was Edwin's agent. Reason for saying Edwin was reputed owner is the statements of Henry referred to. It was the general talk among the people that Henry Clapp was the reputed owner of the place.

Deposition of George G. Warnick.

Age, 47; farmer; resided near Lee Center 18 or 19 years; acquainted with the Clapp farm; on 1st of March 1869, think it was worth $45 per acre; have known Henry Clapp 18 or 20 years; during that time he has been very intemperate; financial credit not been very good; been generally regarded as not good in matters of credit, trust, and confidence.

Int. 8. What, if you know, was the impression of the people of Lee Center prior to 1869 in reference to the ownership of the farm referred to?

Ans. Not owned by Henry Clapp; I think by one Edwin Clapp;

six months between death of Henry's first wife and second
222 marriage; think been no time since October, 1866, that he could obtain $100 from an acquaintance.

Cross-examination:

Should say 450 acres in the Clapp farm; live between two or three miles of it; been on it, more or less, every year; No. 1 land, except 80 acres rather wet, but river land; judgment of value predicated on sale of Mr. Chadwick (not complainant), in Bradford, $50 per acre, about a mile from Clapp farm; about fifty acres of it sold about three years ago; told so by Lewis Clapp; no building on it; heard of Capt. Wm. Frost's buying land adjoining Clapp farm within two years for $31 per acre.

Redirect:

Think 600 acres in Frost purchase; half or over swamp and not as good as wet land on Clapp farm; dry land is similar. Frost's purchase made last fall; think lands depreciated there since March 1, 1869, $5 to $7 per acre on land worth from $25 to $45.

Recross:

Base opinion of depreciation on depreciation of farm produce and stock.

Deposition of Lyman C. Wheat.

Age, 58; merchant; resided at Lee Center 20 years; known Henry Clapp 15 years; during that time been in the habit of drinking to excess; financial credit has been very poor also; so far
223 as I know, has been no time during that period when he could obtain $100 on his sole credit. I judge from my own business; let him have nothing without collateral; dealt with him from 1857 to 1862 or 1863; merchandizing to amount of $25 to $150 per year. Clapp farm was leased to different parties every year, prior to 1869 back to 1864. From what Henry told me I supposed Cephas was Edwin's agent. Some leases of the farm came into my possession to obtain credit. Mrs. Henry Clapp and Cephas have told me same as Henry regarding Cephas' agency. I doubted Henry's ability to pay and called Cephas in to talk with him. Henry usually referred me to Cephas for correctness of his statements. What knowledge I have of title of farm was from Mrs. Henry Clapp, and what I heard confirmed her that title was in Edwin.

Cross-examination:

No personal knowledge of its management after 1864; sold Henry goods on credit. Collateral securities were generally leases made by Henry or Edwin; not positive which; could not say I ever saw a lease in Edwin's name. Seems to me I held a lease made to one Scallon. According to my best recollection leasor in that was Henry; presume I collected the rent under it. (Examines paper marked

"B" and testifies:) That is the lease referred to and Henry's assignment to me. In 1864, earlier or later a year, Henry sold me a frame of a building for between $300 and $400. I paid part
224 money and part credit on a debt. It was on the farm in question; think the debt had previously been secured by a lease. Edwin never paid any money to me on Henry's account. Henry told me a number of times, while he dealt with me, that Cephas was Edwin's agent. Not after he quit dealing with me; quit in 1864.

Redirect:

Don't know as Cephas had anything directly to do with my purchase of the lumber of Henry; think I talked with him about it previously; object was to find if I would be safe. He advised me to buy it. I know Mrs. Shaw, Henry's daughter; she was in Lee Center when I purchased; had recently returned from New York city; do not mean to say Edwin ever paid money into the store for Henry; don't think I ever saw Edwin.

Deposition of Sylvester Shaw.

Age, 53; farmer; resided in Bradford township, Lee county, for 30 years; know the farm which Henry Clapp lives on; is good quality of land; on 1st of March, 1869, should judge it was worth $40 per acre.

Deposition of Henry C. Shaw.

Age, 51; farmer; reside in Amboy; known farm Henry Clapp lives on 25 years; lived within a mile and a half of it three years; now live within seven miles of it; known of sales in that vicinity; $40 per acre low enough for it.

225 Defendant then offered to read the following notes referred to in Cephas Clapp's deposition as marked "H" and "I."

(Complainant objected. Objection overruled. Exception saved.)

"Two years after date I promise to pay to the order of Jason and Edwin Clapp two thousand six hundred dollars, value received, with interest annually, at the Agricultural Bank, Pittsfield, Mass., at the rate of ten per cent. per annum.

(Signed) "HENRY CLAPP."

July 18th, 1856.

Endorsed.

OCTOBER 30, 1863.

"Received from the hands of Cephas Clapp, for Henry Clapp, of Lee Center, Illinois, the sum of thirty dollars."

OCTOBER 30TH, 1864.

"Received this day on the within twenty dollars."

"$139.00. PITTSFIELD, *November 3d*, 1866.

"On demand, after date, I promise to pay to the order of Jason

Clapp & Son one hundred and thirty-nine dollars at this office, with interest.

(Signed) "HENRY CLAPP."

Deposition of Edwin Clapp.

Reside in Pittsfield, Mass.; age, 60; occupation, carriage-maker; do not know Chadwick. I am defendant; Mary M. Clapp is my wife; married in December, 1850; knew Jason Clapp. He died October 20, 1868; was my father; know Ruggles Woodbridge Clapp and Henry Clapp; they are brothers and my cousins. Jason
226 Clapp executed and delivered to Ruggles Woodbridge Clapp a deed, dated November 28, 1855, conveying land in Lee county (description given same as abstract of deed); no knowledge of but the one conveyance to him by Jason. Myself and wife, about November 28, 1855, made a deed to Ruggles Woodbridge Clapp for lands in Lee county (description given same as in abstract of deed); only deed we ever made to him. These deeds within six months afterwards were delivered to me by Ebenezer Clapp, at Pittsfield, Mass., for security for note of $2,600 given by Henry to Ebenezer, said sum to be paid me for Ebenezer. He stated that deeds had never been recorded and never made any use of, and if note was not paid lands to remain as if deeds were never made. Ruggles Woodbridge wrote me that deeds had never been recorded or used, and were returned to me for security for said note; received said letter about time deeds were returned to me. Henry Clapp also told me same and borrowed money on strength of it. I have advanced money to Ebenezer for his support on strength of the $2,600 note, and deeds being in my hands. I fully believed they had not been used or recorded in consequence of said conversations and letter and because David C. Smith, then of Lee Center, Lee county, Illinois, a son-in-law of Ebenezer, told me at same time that he had examined the records and knew they had never been recorded. In 1860 Cephas Clapp, of Lee Center, told me he thought Ruggles W. had so fixed things that he had a claim on portion of said lands, and I gave Cephas those deeds, with instructions to look after
227 the lands and investigate. I appointed him my agent to look after the land and see the taxes were paid, collect rents and money due on land previously sold; not able to state whether I gave him a written power of attorney. Known Ebenezer Clapp of Massachusetts. He is father of Ruggles W. and Henry, and my uncle; about 85 years old, and not been competent to do ordinary business for eight or ten years because of old age. Ebenezer Clapp loaned Henry $2,600; took his note for it. Note was put in my hands; was signed by Henry Clapp. It is now in the hands of Bernard H. Trusdell. Security for its payment was the land described in those two deeds. I have controlled said lands ever since the original purchase in 1853; exercise control by agreement with Henry Clapp, whom I allowed to live on the land until I found he was negligent; then appointed Cephas Clapp. When deed I made to Ruggles W. was returned to me the entry on it of the time of receiving same at

recorder's office was erased, and Ruggles W. within two or three months afterwards told me it was done by a clerk at recorder's office to show it was not recorded. I never was requested to execute a deed to cure an alleged mutilation or defacement of that deed. I never was in Illinois. On November 3d, 1866, I loaned Henry Clapp $139; took his note. Mr. Trusdell has it. My father was present. Henry wanted $500; he stated these lands would be security for the loan. I believed the lands could be held. None
228 of it has been paid. Of the $2,600 loan, October 30th, 1863, $30 were paid, and October 30th, 1874, $20 were paid.

In answer to general interrogatory states: I forgot to state in answer to 19th interrogatory that the signatures were erased by drawing a pen over them, I think. In January, 1868, Henry Clapp and wife came to Pittsfield. He called on me; requested me to go to the hotel and see his wife about the land; wanted I should state to her how his affairs stood. I told her the land in question stood in Jason Clapp's and my names, and when Henry paid $2,600 note and interest I would deed the land to him. They both appeared satisfied. When I let Henry have $139 he wanted me to dispose of part of the lands and buy a place in Chesterfield, Massachusetts. I declined. The letter referred to in my answer to Inter. 10 is in the hands of B. H. Trusdell. I never knew Lot Chadwick and never had any communication with or from him. The first intimation I had of this suit was a notice cut from a newspaper and sent to me.

ALFRED TOOKER sworn:

The error in the testimony is this: Henry Clapp should have been Edwin Clapp. It is my recollection in answer to the 30th cross-interrogatory. I think I recollect that there was no discrepancy in the statements of Mr. Bliss.

229 *Albert Z. Bodine.*

(The two controverted deeds shown witness, testifies:) These are the deeds taken from Cephas Clapp's house by Henry Clapp.

Cross-examination:

I know they are the deeds, from their appearance and from their scratching. I undertook to copy one. At time I saw them they were signed. Signatures on both marked out with a pen. Don't think either had been recorded. One was from Jason Clapp and wife; the other from Edwin Clapp to Ruggles W. Clapp. Did not copy them entire; destroyed copies; think Henry said they were of no account, therefore destroyed them six or eight years ago; perhaps five or six years ago.

Redirect:

Never copied them but once. Henry paid me for copying that day; think it was afterwards, was some months after Chadwick's deed was written by me, before I made copies; think this occurred at Cephas Clapp's house the previous winter.

CEPHAS CLAPP sworn:

(The two controverted deeds shown witness.) Think these are same deeds taken from my house by Henry Clapp; have no doubt. Not seen them from that day to this. Is one line on outside I never seen before, otherwise they are the same.

Defendant's counsel then offered to prove by this witness
230 that use of lands since 1st of March, 1869, has been worth $3 or $4 per acre for each season.

(Objected to by complainant's counsel and objection sustained.)

JAMES H. SALLEE sworn:

(Answer of Henry Clapp shown witness, testifies:) This is in my handwriting. It was written at the office of Eustace, Barge & Dixon. I do not know at whose dictation. I was a student in their office then.

Deposition of Albert Z. Bodine.

Age, 41; occupation, justice of peace; residence, Lee Center; known Chadwick since 1848; known Henry Clapp and Ebenezer Clapp; do not know Edwin Clapp. Deed shown me, marked "A," was made by me and executed by the parties on the 1st day of March, 1869, at house of Lot Chadwick, in Lee county—Henry Clapp, Sarah Clapp, his wife; Lot Chadwick, and I think his wife and myself all present. I saw Chadwick pay over to Henry Clapp bonds and money to about $2,000. My impression is they were Lee county bonds, in denomination of $100 each, and I think ten in number; balance paid in money, I think.

Cross-examination:

Think I saw the bonds counted out and saw denominations of them, and also saw the money pass into Henry Clapp's hands, but cannot testify positively to amount of money. I am the same
231 Albert Z. Bodine whose testimony was taken at Amboy in this case and who was with Henry Clapp when he took two deeds from residence of Cephas Clapp.

Deposition of Lewis Clapp.

Age, 62; residence, Lee Center; have known Edwin Clapp always; Chadwick, thirty years; resided in Lee Center since 1836. I have known the land Henry Clapp resides on before and ever since it was entered. I can only state its value by what I sold land adjoining it for. I sold one-half a quarter section for $15 per acre. I think this land's actual cash value March 1, 1869, was $30 per acre.

George G. Warnick.

Bought land of Lewis Clapp about ten years ago; paid $15 per acre; no improvements on it of any consequence; good deal wet.

CEPHAS CLAPP sworn:

The Lee Clapp judgment was never assigned to me, to my knowledge.

Cross-examination:

I never had any interest.

Redirect:

I had to fence the land.

Which was all — evidence offered by either of said parties.

232 Signature and seal of judge to certificate.
Filed February 13, 1873.

Decree.

Rendered November 18, 1872, in both original and cross bills.

The court finds that Edwin Clapp is son of Jason Clapp; that Jason resided in Massachusetts, where he died October 20, 1868; that Ebenezer Clapp is a resident of Massachusetts and brother of Jason and father of Ruggles W. and Henry Clapp, and that the wife of Henry is the daughter of Lot Chadwick; that on October 14, 1853, John F. Clapp conveyed to Jason and Edwin Clapp the E. ½ of S. W. ¼ of sec. 28 and E. ½ N. W. ¼ sec. 33; that on 29th of October, 1853, Lewis Clapp conveyed to Edwin Clapp the N. E. ¼ of sec. 33, all said lands being in t'p 21, R. 11 E., 4th P. M., in Lee county, Illinois; that both conveyances were duly filed in recorder's office of said county Oct. 29, 1857, and duly recorded; that Jason and Edwin took said title in trust to secure advances made by them to Henry to reconvey when advances and interest refunded; that on 28 November, 1855, Henry refunded advances with interest, and, at request of Henry, Jason conveyed to Ruggles Woodbridge Clapp an undivided half of the E. ½ of S. W. ¼ of sec. 28 and of E. ½ of N. W. ¼ of sec. 33; also the N. W. ¼ of the S. W. ¼ of sec. 34, W. ½ of N. W. ¼ of sec. 34, and N. E. ¼ of S. E. ¼ of sec. 33, all embraced in one deed; that on the same day Edwin Clapp
233 by one deed conveyed to Ruggles Woodbridge an undivided half of E. ½ of S. W. ¼ of sec. 28 and of the E. ½ of N. W. ¼ of sec. 33; also the N. E. ¼ of said sec. 33; that said Henry was the equitable owner of all said lands conveyed to Ruggles Woodbridge Clapp; that said Ruggles Woodbridge at no time had any beneficial interest in any part of them, but took the title as naked trustee for Henry; that on the 18th of July, 1856, Henry applied to his father, Ebenezer, for a loan of $2,600 for two years, with ten per cent. interest, and offered said lands as security; that on that day said Ebenezer made Henry said loan upon the terms proposed; that Ebenezer was then considerably incapacitated for business by infirmities of old age, and it was arranged that said Jason and Edwin should hold the securities for such loan as trustees; that Henry should

make his note for the sum loaned payable to Jason and Edwin in two years at the Agricultural Bank, Pittsfield, Massachusetts, bearing ten per cent. annual interest, and that Ruggles Woodbridge Clapp should deposit the two deeds made to him with said Jason and Edwin, who should hold said deeds and the title to said land to secure said loan; that Henry made such a note, and it was delivered to said Edwin, and that 22d September, 1856, Edwin received from Ruggles Woodbridge said two deeds in pursuance of said arrangement; that said Edwin consented to and has acted as such trustee; that on the return of said deeds to said Edwin said Ruggles Woodbridge informed him that they had not been recorded, and that their return left the title to said lands in said
234 Jason and Edwin, and that Edwin then believed such was the legal effect of such delivery, and that neither had been recorded, and so believed until the 10th December, 1860; that on the 9th of Nov., 1860, Edwin appointed Cephas Clapp, of Lee Center, in said Lee county, his agent to rent said land, receive the rent, pay taxes, and have the general supervision thereof; that said Cephas acted in that capacity from that date until 1st March, 1869; that Henry acknowledged the authority of Cephas and allowed him a general supervision of said lands, but Henry managed to his own use nearly all the rents and profits; that April 1, 1864, Edwin sent Cephas said deeds to enable him better to protect Ebenezer's interests; that on 3d November, 1866, Edwin loaned Henry $139, took note, payable to Jason Clapp and Son on demand, and also by verbal agreement of Henry Edwin should retain said deeds as security; that none of said sum has been paid, and it now amounts to $189.38; that the sum of $30 on October 30, 1863, and $20 on October 30, 1864, were paid on said loan of said Ebenezer, and that the remaining principal and interest, amounting to $6,796.66, is now due; that Jason allowed the use of his name, but all the active duties of said trust were performed by Edwin; that on 10th January, 1868, Ruggles Woodbridge Clapp executed a deed purporting to convey to Henry the same lands mentioned in the deed from Jason to Ruggles and in deed from Edwin to Ruggles, and that said deed was recorded; that February 1, 1868,
235 Henry called on Cephas and desired to take said deeds made by Jason to Ruggles and by Edwin to Ruggles, pretending he desired to copy them; that Cephas refused, but said Henry might copy them there at Cephas' residence, but not to take them away; that while Henry was there Cephas was called out and Henry then left, taking the deeds with him, and immediately thereupon took said deeds to and left them with John V. Eustace, solicitor for Henry Clapp and Lot Chadwick; that Cephas demanded of Henry a return of said deeds, but it was refused; that on the 1st of March, 1869, Henry and wife (a daughter of Lot Chadwick) made a deed purporting to convey to the said Lot Chadwick all said lands mentioned in said deeds from Jason and from Edwin to Ruggles Woodbridge; that it was filed for record March 3, 1869, and duly recorded; that the expressed consideration thereof was $10,000; that then said Henry Clapp and Lot Chadwick assumed control of and since

received rents of said premises; that Lot Chadwick filed his bill herein on September 14, 1869, stating therein that said deed from Ruggles Woodbridge had been mutilated by persons to him unknown by drawing ink lines across the signatures, and praying that the court decree that all the title of Edwin to said land described in said deed be held to have passed to Ruggles and vested in him on November 28, 1856; that said deed be admitted to record with the same effect — if such signatures had not been defaced, and that the master be ordered to make a deed conveying to Chadwick all the interest of Edwin Clapp in said lands on November 28, 1855,
236 subject to any rights in favor of third persons subsequently accrued; that said deed from Ruggles Woodbridge to Henry, the obtaining of the two deeds by Henry from Cephas, the making of the deed by Henry and wife to Chadwick, were in pursuance of a plan by Henry to defraud Ebenezer; that Chadwick accepted said deed for same purpose; that prior thereto Chadwick knew of Edwin's and Ebenezer's interests; that he paid no considerable part of said consideration, and knew Cephas was Edwin's agent and that Henry obtained said two deeds from Cephas by falsehood and deception; that neither Chadwick or any one for him ever requested Edwin to make any deed whatever; wherefor it is decreed that Edwin has a lien on the lands conveyed in deed from Edwin to Ruggles Woodbridge to secure payment of $6,790.66 now due on said loan; that said Henry pay that sum within ninety days, with interest until paid; that in default of such payment so much of said premises as necessary by sold for cash at auction by the master, &c., provide for notice of sale, that any of the parties may purchase, certificate of sale to issue, and for redemption according to law, and, if not redeemed, all rights of the parties and others accruing since commencement of suit be foreclosed and barred, and that master make deed at expiration of time of redemption, and that such grantee be let into possession. In case of deficiency that Edwin have judgment and execution against Henry for it; that
237 Henry's deed to Chadwick be subordinate to Edwin's lien; that, as the original bill prayed no relief as against the lands embraced in deed from Jason to Ruggles Woodbridge, Edwin be denied the right to foreclose his mortgage against them in this suit; that Edwin has no lien for the sum due on $139 note; that Chadwick surrender to Edwin said deed from Jason to Ruggles Woodbridge; that Lot Chadwick pay costs of suit.

That if within ninety days Chadwick pays Edwin said $6,796.66, with interest, or if said premises are sold and Chadwick redeems, then the master make a deed to Chadwick, conveying all the interest of Edwin and wife in said premises.

Chadwick prays appeal; bond and certificate of evidence to be filed in ninety days.

Appeal bond filed December 19, 1872.

Certificate of clerk and seal of court.

Assignments of Errors.

1. The court erred in admitting improper evidence.
2. In rejecting competent testimony.
3. In not rendering a decree as prayed for by complainant.
4. In rendering a decree for defendant.
5. In decreeing that the defendant was entitled to the payment of any money from the complainant or out of the avails of the lands, or that said lands were subject to any charge.

238 6. As to the amount to be paid.
7. The decree is against the evidence.
8. It is inequitable.

EUSTACE, BARGE & DIXON,
Attorneys for Appellant.

Endorsed: Filed Dec. 6, 1886. Wm. H. Bradley, clerk.

239 STATE OF ILLINOIS, } ss:
Lee County, }

In the United States Circuit Court, Northern District of Illinois.

JULIA H. MCLEAN *et al.* }
vs. } In Chancery.
LOT CHADWICK *et al.* }

To the honorable the judge of the United States circuit court, northern district of Illinois, in chancery sitting:

Per stipulation of counsel in the above-entitled cause, a copy of which is hereto attached, whereby it was referred to me, James F. Sandford, as a special examiner of this court to take proof of the respective parties to the above-entitled cause (with the evidence taken therein by Dwight Heaton, Esq., as examiner of this court) — to the court, I, James F. Sandford, as said special examiner, do hereby respectfully report that, having been attended by the solicitors of the respective parties, I did, on the respective dates mentioned in the recitals or jurats of each respective deposition hereto attached, at the cities of Dixon and Amboy, in said county of Lee and State

240 of Illinois, proceed to take the proofs of the complainants in said cause, and the several witnesses attending having been severally sworn and examined by me their testimony was taken in short-hand and afterwards written out, and after having been written out as aforesaid the testimony of each respective witness was read over by me to such witness, and thereupon such witness signed his or her respective deposition and was sworn to the same by me, and have attached the same hereto and make the same a part of this report. Said testimony is numbered from page 264 to page 500, inclusive, & from page 531 to page 552, inclusive.

I would further report that during the taking of the said testimony by me as aforesaid there was introduced by and on behalf of the complainants to said cause certain exhibits, which I have

marked, respectively, Exhibit- 1, 2, 3, 4, 5, 6, 7, 8, 9, and I have attached the same, except such of said exhibits as have been by agreement of counsel hereto retained by counsel for the complainants to said cause, to and I make the same a part of this report.

I would further report that I have hereto attached and make the same a part of this my said report certain testimony and proofs numbered from page 1 to page 265, inclusive, and from page 501 to page 531, inclusive, by and on behalf of the complainants to this cause as testimony taken on behalf of said complainants by Dwight Heaton, Esq., as examiner of this court.

I would further report that I have hereto attached and make the same a part of this my said report certain exhibits introduced by and on behalf of the complainants to said cause during the taking of said testimony by said Dwight Heaton, Esq., as aforesaid. Said exhibits consist of three promissory notes attached to the testimony of the witness Curtis Cannon, which are marked, respectively,
241 Exhibit- A, B, C, and certain exhibits attached to the testimony of the witness Ira W. Lewis, which are marked, respectively, Exhibit- A, B, C, D, E, F, G, H, I, J, K, and certain exhibits attached to the testimony of the witness M. L. Arnold, which are marked, respectively, Exhibit- 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, *15*, 16, 17, 18, 19, 20, 21, 22, 23.

And I further report and certify that said several depositions numbered from page 264 to page 500, inclusive, and from page 532 to page 551, inclusive, together with said exhibits numbered from 1 to 9, inclusive, constitute all the testimony, evidence, and proofs taken or offered before me on the part of the complainants to said cause; and that said several depositions numbered from page 1 to page 265, inclusive, and from page 501 to page 531, inclusive, together with said exhibits marked A, B, C; A, B, C, D, E, F, G, H, I, K, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, *15*, 16, 17, 18, 19, 20, 21, 22, 23, constitute all the testimony, evidence, and proofs on the part of the complainants to said cause taken by Dwight Heaton, Esq., as aforesaid, that have come into my possession.

All of which is respectfully submitted.

Dated at Dixon, Illinois, this tenth day of November, A. D. 1886.

JAMES F. SANDFORD,
Special Examiner.

242 Circuit Court of the United States, Northern District of Illinois.

EDWIN W. MCLEAN
vs.
LOT CHADWICK, HENRY CLAPP, WILLIAM E. IVES, JEREMIAH TONDREW, Nicholas Schufelt, John Hinderman, Conrad Mealhouse, Ruggles W. Clapp, and Emily Clapp.

The depositions of Cyrus Craig, George G. Warwick, Cephas Clapp, and William B. Stuart, of the county of Lee and State of Illinois, witnesses of lawful age produced, sworn, and examined upon their

corporal oaths upon the 15th and 18th days of September, A. D. 1873, at the office of Dwight Heaton, Esq., of Dixon, Illinois, by me, said Dwight Heaton, duly appointed an examiner by a commission issued out of said court, which is hereto prefixed, appointing me an examiner, under the amended 67th rule in equity of the supreme court, to take proofs in the above-entitled cause and report the same to this court—

Martin H. Williams, Esq., appearing before me in the taking of the following testimony and propounding interrogatories on the behalf of the above-named complainant, and Messrs. Eustace, Barge and Dixon also appearing before me and cross-examining said witnesses as counsel on behalf of the said defendants, Lot Chadwick, Henry Clapp, and Wm. E. Ives.

The said depositions having been taken by agreement of parties, as well as by virtue of the foregoing commission, I, Dwight Heaton, Esq., of Dixon, Illinois, Lee county, Illinois, duly appointed examiner to take proofs in the above-entitled cause, do hereby certify that previous to the commencement of the examination of the said

243 Cyrus Craig, George G. Warwick, Cephas Clapp, and William B. Stuart, as witnesses in the said suit between the said Edwin W. McLean, as plaintiff, and Lot Chadwick, Henry Clapp, William E. Ives, Jeremiah Tondrew, Nicholas Schufelt, John Hinderman, Conrad Mealhouse, Ruggles W. Clapp, and Emily Clapp, defendants, they and each of them were duly sworn by me to testify the truth in relation to the matters in controversy between the said plaintiff and the said defendants so far as they and each of them should be interrogated concerning the same; that the said depositions were taken in my office, in Dixon, Lee county, Illinois, on the respective dates aforesaid, and that after said depositions were so taken by me as aforesaid the interrogatory and answers thereto as written down were read over to said witnesses and each of them, and that thereupon the same were signed and sworn to by the said deponents, Cyrus Craig, George G. Warwick, Cephas Clapp, and William B. Stuart, before me, as such examiner, the oath being administered to each of them at the place and on the days & year hereinbefore and in said depositions mentioned.

244 CURTIS CANNON, a witness produced on behalf of the complainant, being first duly sworn, in answer to questions testified as follows, to wit:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Answer. My name is Curtis Cannon; age is 47 years; occupation, working on farm as farm-hand in different places.

Inter. 2nd. Do you know the parties plaintiff and defendant to this suit; if yea, how long have you known them & each of them?

Answer. I do not know Edwin McLean. I never saw him that I know of. I know Mr. Ives, Mr. Chadwick, Mr. Henry Clapp. I know Wood. Clapp, or Ruggles W. Clapp, but have not seen him for several years. I don't know Emily Clapp. I know nothing about

Tondrew, Schufelt, Hinderman, or Mealhouse. I have known Henry Clapp for 25 years. Woodbridge Clapp is somewhere along seventeen years or eighteen years since I first knew him. I would not be positive how long I have known Ives & Chadwick, but about the time they have been in Amboy. I was there before Amboy started.

Inter. 3rd. Where was you living in the year 1857, and did you at any time in that year deliver to Ruggles W. Clapp, or Woodbridge Clapp, any notes payable to him?

Ans. Well, there is some notes there that was given somewhere along there, but as for the date I would not give it. It has slipped my mind. I was living on Rile Strickland's and Warren Badger's place at the time them notes were given. I gave him notes & there they be, and I don't deny it. I gave him notes.

Inter. 4th. Look at the notes marked "A," "B," & "C," to be attached to your deposition, and state whether or not those are the notes referred to by you in answer to the foregoing question.

245 Ans. It appears to be my name there—all correct. They are the notes I referred to, as far as I can tell. I can't read the writing.

Inter. 5th. Did you ever at any other time than the time referred to give any notes to Ruggles W. Clapp?

Ans. None; only them three at the one time.

Inter. 6th. Can you read writing?

Ans. No, sir.

Inter. 7th. Can you read printing or printed letters?

Ans. Yes, sir.

Inter. 8th. You say you never gave notes to Ruggles W. Clapp except at the one time? How many notes did you give him at the one time?

Ans. Three.

Inter. 9th. Where was you when you gave him those notes?

Ans. I was in his office.

Inter. 10th. At what place?

Ans. Amboy, Lee county, Ill.

Inter. 11th. When was it, as near as you can state?

Ans. It was somewhere seventeen or eighteen years ago; one of them two years.

Inter. 12. How did you come to be in Ruggles W. Clapp's office at that time, and what was the consideration or reason of your giving the three notes referred to above in your deposition? State it fully and particularly.

Ans. He come to me in the street, and, said he, I want to sell you a piece of land. Said I, I can't buy no land, for I am not able to at the present time. But, said he, that won't make no difference; I will take your notes. He wanted I should come into his office; then he and Perry both sot in. Well, then, I asked him where that land lay. He told me. Well, I knew the land. Then I asked him what his price was on that land. He said five hundred dollars. I told him it was too much, and he said he would furnish lumber for to put me up a small house and to fence it with. Well, I told him then under

those considerations I would take it. Well, Perry went right
246 at it then and drawed them notes up, and when he called on me to sign them, said I, Where is the bond that you promised me for a deed? Well, said he, that won't make no difference to-day, said he, for I am busy and cannot draw it up this afternoon, but, said he, I will have it ready for you to-morrow. But when to-morrow come he had not time to get it up, and I called for — five or six times, and there was no bond for me. Then I called for the notes, and he said they was gone. Well, after I called for them notes I have never seen Woodbridge again. I have never seen him since.

Inter. 13. By Woodbridge Clapp do you mean Ruggles Woodbridge Clapp?

Ans. Yes, sir; the man I gave them notes to.

Inter. 14. When or at what time did Woodbridge Clapp promise you a bond for a deed?

Ans. It was promised before them notes was signed, but, as I said before, when he made out them notes.

Inter. 15. Was it in the same conversation in which you agreed to give the notes?

Ans. Yes, sir.

Inter. 16. Have you ever received any bond for a deed for lands as promised by Woodbridge Clapp or any bond for a deed for any lands?

Ans. Never a scratch of a pen.

Inter. 17. Have you ever received anything for the notes which you gave to R. W. Clapp or Woodbridge Clapp, as stated by you above?

Ans. No, sir; nothing.

Inter. 18. You stated that the notes were written by one Perry. Who was he and what was his other name?

Ans. That, then, I cannot tell you.

Inter. 19. In what business was this man Perry at that time?

Ans. Clerk, they told me, for Clapp.

Inter. 20. Were the notes that you signed at that time read
247 to you by any one at that time or the amount of the three notes stated to you at that time; if so, what was the amount of the notes so read or stated to you?

Ans. Yes, sir; they was pretended to be. The first one was to be one hundred dollars and the others to be two hundred dollars apiece.

Inter. 21. Did you or not understand the notes that you signed at that time to be one note for one hundred dollars and two notes for two hundred dollars each, as stated above?

Ans. I supposed that he read them correct. That is all I know about it.

Inter. 22. Did you ever at any other time sign and deliver any notes to Woodbridge Clapp or R. W. Clapp?

Ans. None; only those three at the one time.

Inter. 23. Did you ever to your knowledge sign three notes, each for the sum of $433.33 and payable in one, two, and three years,

respectively, after date, payable to or to be delivered to said R. W. Clapp?

—. I have no recollection of any such amount. I know no such amount.

Inter. 23. Had you at the time you signed the three notes in question or have you at any time had since property in your possession from which the said sum of five hundred dollars or the sum of fourteen hundred dollars or any amount could be collected on execution or was liable to execution?

Ans. No, sir.

Inter. 24. Where have you lived and what has been your employment or business generally since 1857?

Ans. Well, sir, I have lived part of the time in Iowa & part of the time in Illinois. My business has been various kinds of work. I have never laid up anything. Part of time I have worked at mason work, part of time on farm, part of time digging wells, and other work.

Inter. 25. Were the three notes shown to you ever presented to you for payment or a demand ever made upon you for pay-
248 ment of the same; if so, when was your attention first called to them and by whom?

Ans. No, sir; they never was. They were presented for payment once—by Mr. Arnold once—but no payment demanded.

CURTIS CANNON.

Subscribed & sworn to before me this 14th day of August, A. D. 1875.

DWIGHT HEATON,
Master in Chancery.

Witness claims fees, 20 miles' travel.

EXHIBIT A.

$433 $\frac{33}{100}$. AMBOY, *August* 1, 1857.

Three years after date I promise to pay to the order of R. W. Clapp four hundred & thirty-three & $\frac{33}{100}$ dollars, with interest at ten p'r ct., payable annually, value received.

CURTIS CANNON.

(Endorsed:) Curtis Cannon note. Without recourse. R. W. Clapp.

"B."

$433 $\frac{33}{100}$. AMBOY, *August* 1, 1857.

Two years after date I promise to pay to the order of R. W. Clapp four hundred and thirty-three & $\frac{33}{100}$ dollars, with ten per cent. interest, payable annually, value received.

CURTIS CANNON.

(Endorsed:) Curtis Cannon note. Without recourse. R. W. Clapp.

those considerations I would take it. Well, Perry went right
246 at it then and drawed them notes up, and when he called on me to sign them, said I, Where is the bond that you promised me for a deed? Well, said he, that won't make no difference to-day, said he, for I am busy and cannot draw it up this afternoon, but, said he, I will have it ready for you to-morrow. But when to-morrow come he had not time to get it up, and I called for — five or six times, and there was no bond for me. Then I called for the notes, and he said they was gone. Well, after I called for them notes I have never seen Woodbridge again. I have never seen him since.

Inter. 13. By Woodbridge Clapp do you mean Ruggles Woodbridge Clapp?

Ans. Yes, sir; the man I gave them notes to.

Inter. 14. When or at what time did Woodbridge Clapp promise you a bond for a deed?

Ans. It was promised before them notes was signed, but, as I said before, when he made out them notes.

Inter. 15. Was it in the same conversation in which you agreed to give the notes?

Ans. Yes, sir.

Inter. 16. Have you ever received any bond for a deed for lands as promised by Woodbridge Clapp or any bond for a deed for any lands?

Ans. Never a scratch of a pen.

Inter. 17. Have you ever received anything for the notes which you gave to R. W. Clapp or Woodbridge Clapp, as stated by you above?

Ans. No, sir; nothing.

Inter. 18. You stated that the notes were written by one Perry. Who was he and what was his other name?

Ans. That, then, I cannot tell you.

Inter. 19. In what business was this man Perry at that time?

Ans. Clerk, they told me, for Clapp.

Inter. 20. Were the notes that you signed at that time read
247 to you by any one at that time or the amount of the three notes stated to you at that time; if so, what was the amount of the notes so read or stated to you?

Ans. Yes, sir; they was pretended to be. The first one was to be one hundred dollars and the others to be two hundred dollars apiece.

Inter. 21. Did you or not understand the notes that you signed at that time to be one note for one hundred dollars and two notes for two hundred dollars each, as stated above?

Ans. I supposed that he read them correct. That is all I know about it.

Inter. 22. Did you ever at any other time sign and deliver any notes to Woodbridge Clapp or R. W. Clapp?

Ans. None; only those three at the one time.

Inter. 23. Did you ever to your knowledge sign three notes, each for the sum of $433.33 and payable in one, two, and three years,

respectively, after date, payable to or to be delivered to said R. W. Clapp?

—. I have no recollection of any such amount. I know no such amount.

Inter. 23. Had you at the time you signed the three notes in question or have you at any time had since property in your possession from which the said sum of five hundred dollars or the sum of fourteen hundred dollars or any amount could be collected on execution or was liable to execution?

Ans. No, sir.

Inter. 24. Where have you lived and what has been your employment or business generally since 1857?

Ans. Well, sir, I have lived part of the time in Iowa & part of the time in Illinois. My business has been various kinds of work. I have never laid up anything. Part of time I have worked at mason work, part of time on farm, part of time digging wells, and other work.

Inter. 25. Were the three notes shown to you ever presented to you for payment or a demand ever made upon you for pay-
248 ment of the same; if so, when was your attention first called to them and by whom?

Ans. No, sir; they never was. They were presented for payment once—by Mr. Arnold once—but no payment demanded.

CURTIS CANNON.

Subscribed & sworn to before me this 14th day of August, A. D. 1875.

DWIGHT HEATON,
Master in Chancery.

Witness claims fees, 20 miles' travel.

EXHIBIT A.

$433 $\frac{33}{100}$. AMBOY, *August* 1, 1857.

Three years after date I promise to pay to the order of R. W. Clapp four hundred & thirty-three & $\frac{33}{100}$ dollars, with interest at ten p'r ct., payable annually, value received.

CURTIS CANNON.

(Endorsed:) Curtis Cannon note. Without recourse. R. W. Clapp.

"B."

$433 $\frac{33}{100}$. AMBOY, *August* 1, 1857.

Two years after date I promise to pay to the order of R. W. Clapp four hundred and thirty-three & $\frac{33}{100}$ dollars, with ten per cent. interest, payable annually, value received.

CURTIS CANNON.

(Endorsed:) Curtis Cannon note. Without recourse. R. W. Clapp.

249 "C."

$433\frac{33}{100}$. AMBOY, *August 1st*, 1857.

One year after date I promise to pay to the order of R. W. Clapp four hundred and thirty-three & $\frac{33}{100}$ dollars, with interest at ten per cent, value received.

CURTIS CANNON.

(Endorsed:) Curtis Cannon note. Without recourse. R. W. Clapp.

CYRUS CRAIG, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Ans. My name is Cyrus Craig; occupation, farmer; residence, Lee Center; my age is 68 years, or will be in a few days.

Interrogatory 2nd. Are you acquainted with the parties to this suit, or either, and which of them, and how long have you known them, respectively?

Ans. I know Edwin W. McLean by sight. I have seen him once. I merely know Lot Chadwick. I know Henry Clapp; have known him fifteen or sixteen years. I have known Ives about same length of time—ever since 1856; don't know Tondrew or Shufelt or Himderman or Milhouse; know Ruggles W. Clapp and Emily Clapp ever since the year 1856—in the latter part of the year—November or December.

Interrogatory 3rd. Did you ever execute and deliver any note or notes to said Ruggles W. Clapp? If so, please state when, giving the dates and amounts and time when payable.

(Witness was here shown three notes to refresh his memory.)

Ans. Yes; November 29th, 1856; two notes for one thousand dollars each and one note for fourteen hundred. One of the one-
thousand-dollar notes was payable in three years after date,
250 with interest at ten per cent; one note for one thousand dollars payable four years after date, interest ten per cent.; one note — fourteen hundred dollars payable five years after date, interest at ten per cent.

Inter. 4. What consideration, if any, did you receive from said R. W. Clapp for said notes?

Ans. I received a bond for a deed.

Inter. 5. Deed of what kind, if you know?

Ans. The southwest quarter of section 12, in the town of Amboy, town. 20, range 10, Lee county and State of Illinois.

Inter. 6. When did you receive said bond and what became of the same?

Ans. November 29th, 1856, Ives got it of me to draw off a copy—William E. Ives.

Inter. 7th. When did Mr. Ives get it to draw off a copy and was it ever returned to you?

Ans. He got it shortly after those notes were given; probably the next week. I called for the bond, and he said he had given it to Clapp. It was never returned to me.

Inter. 8th. What Clapp do you mean?

Ans. Ruggles W. Clapp.

Inter. 9th. What became of said land?

Ans. I left it in 1861.

Inter. 10. Did you ever receive any deed or title to the same?

Ans. No.

Inter. 11. Why did you leave said land?

Ans. I thought I could do better to leave. I had no chance there.

Inter. 12th. Have you, since the giving the three notes above described to the said R. W. Clapp, any real or personal property subject to execution or attachment out of which the same or any part thereof might have been made or collected?

Ans. No.

Inter. 13. Have you ever paid anything on said notes?

Ans. No.

Inter. 14. Have you any property now liable to execution attachment?

251 Ans. No, sir.

Inter. 15th. Did you ever give Mr. Clapp any other note or notes? If so, state the amount, date, and when payable of the same.

Ans. I gave him one note of five hundred of the same date as these, November 29th, payable in two years after date.

Inter. 16. Did you ever pay said note or any part thereof?

Ans. No, sir.

CYRUS CRAIG.

Subscribed & sworn to before me this 15th day of September, A. D. 1873.

DWIGHT HEATON, *Examiner.*

GEORGE G. WARWICK, a witness of lawful age, produced and sworn & examined on behalf of the complainant, testified as follows:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Ans. Name is George G. Warwick; age is 49 years; occupation, farmer; residence, Lee Center, Lee county, Illinois.

Inter. 2d. Do you know the parties to this suit or either and which of them and how long have you known them, respectively?

Ans. I know the two Mr. Clapps, Henry & Ruggles W., & Mr. Ives also, & Chadwick. I knew Mrs. Emily Clapp in her lifetime. I have known them 18 or 20 years. I do not know the others.

Inter. 3rd. Are you acquainted with one Curtis Cannon? If your answer be yea, state how long and how intimately you have known him.

Ans. I am acquainted with him; have known him sixteen or seventeen years. I knew where he lived and saw him occasionally.

Inter. 4th. Has said Cannon ever worked for you; if so,
252 when and in what capacity?

Ans. He worked for me a few days on the farm in the neighborhood of fifteen years ago.

Inter. 5th. Have you been acquainted with his pecuniary responsibility and circumstances since 1856?

Ans. Only by reputation and observation; I had no business with him.

Inter. 6th. Has he had since that time—the year 1856—in his possession any real or personal property which would be subject to execution or attachment?

Ans. I should think not. According to my judgment I always considered him worthless, and he was always spoken of in that light.

Inter. 7th. Do you know any other matter or thing touching the matters in controversy in this case to the advantage of the complainants? If yea, state the same as fully and particularly as if you had been particularly interrogated concerning the same.

Ans. I don't know as I do.

GEORGE G. WARWICK.

Subscribed and sworn to before me this 15th day of September, A. D. 1873.

DWIGHT HEATON, *Examiner.*

253 *Testimony of Cephas Clapp.*

CEPHAS CLAPP, a witness of lawful age, produced, sworn, & examined *produced* on behalf of complainant, being duly sworn, testified as follows:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Ans. My name is Cephas Clapp; occupation, farmer; live in Lee Center, Lee county, Illinois; age is sixty years.

Interrogatory 2nd. Do you know the parties to this suit, or either and which of them, and how long have you known them respectively?

Ans. I know Lot Chadwick, Henry Clapp, R. W. Clapp, Mrs. Woodbridge Clapp; used to know her; don't know the others; know Wm. E. Ives.

Inter. 3rd. Are you acquainted with the northeast quarter of section 33, in township 21 north, of range 11 east, of the 4th principal meridian; also the east half of the northwest quarter of section 33, and the east half of the southwest quarter of section twenty-eight, all of town. twenty-one north, of range 11; also the northwest quarter of the southwest quarter of the west half of the northwest quarter of section thirty-four (34) and the northeast quarter of the southeast quarter of section thirty-three, in said township number twenty-one? If your answer be yea, state how long you have known said premises & what has been your connection with the same.

Ans. I have known it for fifteen to eighteen years; worked on it

some. I had the agency of it from 1860 to 1868, I think, for a man named Edwin Clapp, of Pittsfield, Massachusetts.

Inter. 4th. Who was in possession of said land in 1855 & 1856, and how long did the said parties remain in possession of the same?

Ans. It was wild then, I think, & no one in possession, I think.

Inter. 5th. When was it first occupied and by whom, and how long did said parties remain in possession?

254 Ans. It was first occupied by Henry Clapp, and he has been in possession of it more or less ever since. He is there now, I believe.

Inter. 6. When did said Henry Clapp take possession and during what time, if any, has he been out of possession?

Ans. I don't recollect exactly what year he first built his house—a little log-house up there. It was between 1855 & 1857, I think. He sometimes moved down to Lee Center, to the village in the winter & back again in the spring. I don't know how many times; some two or three or four times.

Inter. 7th. Did you know of Lot Chadwick receiving a deed of said premises from said Henry Clapp? If yea, state the time when.

Ans. I understood he did. I think it was somewhere from 1867 to 1869. It was in the spring. I cannot state the month.

Inter. 8th. Did you, prior to the time of said deed to said Chadwick, have any conversation or conversations with said Henry Clapp with regard to a certain mortgage held upon said premises by the said complainant? If your answer be yea, state what he said in regard to the same.

(Objected to by Chadwick's attorney as immaterial & improper.)

Ans. I did have conversation with him a number of times. He said one-half of that land was mortgaged to Mr. McLean, East, and that Mr. Arnold had it in Amboy, and he thought he better settle with him—compromise it. He said Brother Woodbridge, through Mr. Ives, had got up the notes with some poor paper, & he was afraid he would take & sell them notes to somebody else & have a lien on the land. I advised him to settle it. He said he would go down & see Mr. Arnold—at one time he said he would—and have him come up to Mr. Chadwick's, and they would talk it over. He said Woodbridge had some odd pieces of land, & he thought he would get them on to him.

255 Inter. 9th. When did you have your first conversation with Mr. Henry Clapp, in which he spoke of compromising the McLean mortgage?

Ans. I don't know the first time. He spoke of it several times—several years and several times a year. He was always for settling when he got a little tight.

Inter. 10. State as near as you can when you first had conversation.

Ans. I can't fix it; from 1863 to 1865—somewhere along there. I don't know but before.

Inter. 11. Was it before or after the conveyance of said land to

said Lot Chadwick that he spoke of going up to Chadwick's with Arnold and making a settlement of the McLean mortgage?

Ans. It was before, I think.

Inter. 12. Do you know whether said Clapp and said Arnold were at Chadwick's on business in connection with the McLean mortgage?

Ans. Henry Clapp told me Mr. Arnold was coming, and I saw Mr. Arnold there on that day.

Intef. 13. By "there" what place do you mean?

Ans. Mr. Chadwick's house in Lee Center.

Inter. 14. State the time Mr. Clapp told you Mr. Arnold was to be at Mr. Chadwick's and you saw them there.

Ans. It was either in 1867 or 1868. I don't keep any date.

Inter. 15. Did you know of R. W. Clapp conveying said premises to Henry Clapp? If your answer be yea state, if you know, what was the actual consideration between the parties for said deed.

Ans. Yes. There was no consideration—that is, Henry told me so, and so did R. W. Clapp.

Inter. 16. When did they tell you so?

Ans. Well, it was either in 1867 or 1868. It was right after he got the deed. Henry come down to my house and talked it over, and told me there was no consideration. Woodbridge told
256 me since that there was no consideration; told me so several times. In fact, he did not know what he was signing, he said.

Inter. 17. Since the conveyance of said land to said Chadwick do you know of said Henry Clapp making an effort to compromise the said McLean mortgage?

(Objected to as immaterial & irrelevant.)

Ans. Mr. Arnold told me that Henry had been to him about settlement.

(Objected to.)

Inter. 18. Have you had any conversation with said Henry Clapp or with said Chadwick in regard to the compromising said McLean mortgage since the deed to Chadwick?

Ans. I have not.

Inter. 19. Do you know of the defendant Ruggles W. Clapp making any efforts to compromise the said McLean mortgage upon said premises?

(Objected to.)

Answer. I do not.

Inter. 20. Have you had any conversations with said Ruggles W. Clapp in regard to the compromising the McLean mortgage?

Ans. I have talked with him several times aboyut it. He told me how he got up his notes. He said he hired Mr. Ives by the year to do his law business, and he gave Mr. Ives his house and lot to change papers with him, the house where Mr. Briggs lives—I don't know the number of it—in Amboy. He told me some of the

paper that he gave. I don't remember all of it. I asked him if the paper was good, and he said it was not worth a damm.

(Objected to as irresponsive.)

Inter. 21. Please state the time of the conversation given above and state fully and particularly what was said by said Ruggles W. Clapp as to the exchange of papers & what papers were referred to.

(Objected to.)

257 Ans. It was last winter; it was 1872, the last time I spoke to him—the winter of 1872 & '3. He told what notes he gave Mr. Ives and who they were against. To get his own notes up that he gave Mr. McLean. He told the notes—one was Curtis Cannon, two or three against Mr. Craig, and I think there was one against a man named Morris or Morrison, and a draft on New York against his brother—and wanted to know what I thought of such paper. I told him it showed what Mr. Ives was, to take such paper. I think he told me that he had made affidavit about that fact—about changing the papers himself. If I was to tell the whole conversation it would take me a week.

Inter. 22nd. In said last-mentioned conversation was anything said as to how said Clapp induced said Ives to make such exchange of the notes secured by the McLean mortgage? If so, state the same fully.

Ans. I believe I have answered that question, haven't I? He gave Mr. Ives his house and lot for the purpose of getting the papers exchanged—the house where Mr. Briggs lives, in Amboy, the place where Ruggles W. Clapp lived at one time.

Inter. 23d. Have you had more than one conversation with said R. W. Clapp in relation to the exchange of notes for the notes secured by the McLean mortgage? If your answer be yea, state how many and the time of the first conversation.

Ans. I have had several conversations with him. I think the first time was about 1867 or 1868 or 1869—somewhere along there—when he came out here to take the body of his child East, and twice since.

Inter. 24th. State what was said by him in the first conversation referred to above.

Ans. He said he made a bargain with Mr. Ives to get up the notes and gave him other papers—notes and drafts on his brother in New York. He gave him his house and lot to change.

Inter. 25. Where does R. W. Clapp reside when in this State?

Ans. I think he resides at Lee Center mostly, Lee county, Illinois.

258 Inter. 26. How much of the time has he been here since 1857, and where has he been when absent?

Ans. I don't know exactly how much time he has been here since he went away. He went away somewhere about 1857, 1858, or 1859, and he has been here altogether, off and on, some three, four, or five months since. He has been in Boston, New York, Oil City, and in three places in Massachusetts—Leverett, Chesterfield, and North

Hampton. He kept hotel in Washington and New York, he said. All since he left here.

Inter. 27. How many times has he been at home since he left here, in 1857 or 1858?

Ans. Some three or four times.

Inter. 28. What is the value of the premises in the bill of complaint and in the third interrogatory described?

Ans. It is worth thirty-five or forty dollars per acre.

Inter. 29. Was you acquainted in 1856 & 1857 with the southeast quarter of the southeast quarter of section thirty, township 20, range 11, in the county of Lee and State of Illinois, and with the east half of the northeast quarter of the southwest quarter of section thirty-six, town. 20, range 10, in said Lee county? If your answer be yea, state the value of said tracts respectively.

Ans. I was acquainted with it somewaht. In fact, I owned one lot of it, the 20-acre lot, and sold it to him or swapped with him. He cut off all the timber in 1857, I think. He got it in 1856 or the summer of 1857; one or the other. I did not consider the land worth much of anything after the timber was off. It was very poor. That will answer for both pieces. He cut off the timber from both.

Inter. 30. Who do you mean by he in your answer above?

Ans. Ruggles W. Clapp.

Inter. 31st. Do you know of any other matter or thing
259 touching the matters in controversy in this case tending to the advantage of the complainant? If yea, state the same as fully and partic-larly as though you had been particularly interrogated concerning the same.

Ans. I think I have told you all concerning these things.

Inter. 32. Do you know one Curtis Cannon? If your answer be yea, state where he has resided since 1857 and was residing in 1857.

Ans. I know Mr. Cannon. I think most of the time he has resided in Lee Center township. He was off in war some time. He worked for me some by the day.

Inter. 33. Have you been acquainted during the year 1857 and since that time with his financial condition, and have you known whether not he has been possessed of any real or personal property?

Ans. To the best of my knowledge, he has not been considered worth anything; very poor.

Cross-examination:

Cross-inter. 1st. At what time did your conversation with Henry Clapp, in which he spoke about getting Arnold to come to Chadwick's, take place?

Ans. I think it was in 1867 or 1868.

Cross-inter 2d. What means have you of fixing the time?

Ans. It is the last time I had any conversation with him on that subject. It is either just before he got the deed of Woodbridge or or just after.

Cross-inter. 3rd. What did he say in that conversation?

Ans. That he wanted to settle with Mr. Arnold. He said he was afraid his brother, R. W. Clapp, who had the notes, would sell them to somebody else.

Cross-inter. 4th. Is that all you want to say in answer to that qua-tion?

Ans. Yes.

Cross-inter. 5th. Do you know when it was that Henry Clapp sold said lands to Chadwick; and, if so, how do you know?

Ans. I think it was in 1867 or 1868; in 1868, to the best
260 of my recollection. I think Henry Clapp told me so.

Cross-inter. 6th. Do you know or have you any reason to believe that R. W. Clapp ever had any equitable interest in said land?

(Objected to as irrelevant & improper & not cross-examination.)

Ans. I think he did have an equitable right to it or part of it—part of the whole.

Cross-inter. 7. What did that equitable right consist in?

Ans. Well, I can't tell you.

Cross-inter. 8. What is your reason for saying that he had any, then?

Ans. Because Henry Clapp told me so & Woodbridge told me so, both of them.

Cross-inter. 9. What did they or either of them tell you such equitable interest was based upon?

Ans. I did not know as they told me what it was; don't remember.

Cross-inter. 10. Don't you know that said lands were conveyed to R. W. Clapp by relatives of said Henry Clapp without the said Ruggles W. Clapp paying any consideration therefor?

Ans. I do not.

Cross-inter. 11. Have you not been so informed by Jason Clapp and Ebenezer Clapp or either of them, the grantors of said land to said R. W. Clapp?

(Objected to as improper and irrelevant.)

Ans. I have not.

Cross-inter. 12. Have you any reason to believe that R. W. Clapp paid any consideration whatever for said lands to the persons who conveyed them to him?

Ans. I have reason to believe he did.

Cross-inter. 13. What was it that he paid therefor?

Ans. All the reason I have is that Henry said that R. W. Clapp settled some debts for him, and Woodbridge also said so.

Cross-inter. 14. Debts in favor of whom?

Ans. I don't know who; I did not ask them.

261 Cross-inter. 15. Do you believe that such statements were true?

(Objected to as irrelevant & improper.)

Ans. I supposed they were true; they told me so & I believed it.

Cross-inter. 16th. Were you examined as a witness in a case recently pending in the circuit court of Lee county, Illinois, in which the validity of said conveyances to R. W. Clapp was in question, and were you present at the hearing of said case?

Ans. I think I was; I was out there at court. I was there some of the time during the hearing of the case, and some of the time I was not.

Cross-inter. 17. Was not your sole buisness at said court to be present at said hearing?

Ans. No; that wasn't my sole buisness.

Cross-inter. 18. What other buisness kept you at court at that time?

(Objected to as irrelevant.)

Ans. I had no other buisness at court; that was all the court buisness. I went home & come back.

Cross-inter. 19. Do you know, from your knowledge of that case, that no claim or pretense was made by either party in that suit that R. W. Clapp had paid any consideration whatever for said conveyances or for either of them?

(Objected to for form & as irrelevant and improper.)

Ans. I don't know whether there was any or not; don't recollect.

Cross-inter. 20. When did you first have any conversation with R. W. Clapp in relation to the McLean mortgage?

Ans. I don't recollect the time; it was when he came out after the body of his child. I don't recollect the time. I think it was after the war.

Cross-inter. 21. How long after the war?

Ans. I don't recollect.

Cross-inter. 22. Where did that conversation take place?

262 Ans. At my house, in Lee Center.

Cross-inter. 23. Who was present at that conversation?

Ans. I presume my wife was. I don't recollect; possibly his brother may have been there. Lee Clapp, he was in there several times.

Cross-inter. 24. How did he come to speak about the McLean mortgage?

Ans. I don't know how he come to speak about it; because he thought about it, I suppose; perhaps I asked him about it; don't remember.

Cross-inter. 25. What makes you think that perhaps you asked him about it?

Ans. I don't know as I have any reason for supposing I asked him about it.

Cross-inter. 26. Do you think that you asked him about——

Ans. I don't think anything about it. I don't know.

Cross-inter. 27. How did the conversation commence?

Ans. I don't recollect.

Cross-inter. 28. What is the first thing in the conversation that you do recollect?

Ans. I recollect of his telling me that he would tell me how that Arnold matter stood, & he went on and told me.

Cross-inter. 29. Had you at that time said anything to him about that Arnold matter?

Ans. Don't recollect that I had.

Cross-inter. 30. Had he said anything to you about it before?

Ans. Not before that time.

Cross-inter. 31st. Had he any reason to suppose that you knew anything about or had any interest in that Arnold matter at that time?

Ans. I presume he did not. I think not; don't know that he did.

Cross-inter. 32. Can you give any reason, then, for his talking to you about it?

Ans. I can give no particular reason for it. I should presume that I asked him about it, as I had heard Henry's story about it. I wanted to hear his. Henry had told me about it a number of times.

Cross-inter. 33. Did you swear a few minutes ago that you did not know that you had any reason in particular to think that you asked him?

263 Ans. I presume I did not have any particular reason; it was nothing to me.

(Error.—No. 34 passed & omitted by mistake by examiner.)

Cross-inter. 35. How long did R. W. Clapp remain in Lee county at the time he came after his child's body?

Ans. I should think some three or four days, to the best of my belief.

Cross-inter. 36. How frequently was he at your house during those three or four days?

Ans. Some three or four times.

Cross-inter. 37. What time of year was it—spring or fall?

Ans. I could not tell; it was cool weather. I had an idea it was in the fall, but I could not tell. I know it was muddy.

Cross-inter. 38. Where had that body been buried?

Ans. At the old burying ground at Lee Center.

Cross-inter. 39. Are you acquainted with the general character of R. W. Clapp for truth and veracity in the neighborhood of Lee Center?

(Objected to as improper.)

Ans. So far as truth and veracity are concerned he always told me the truth. I have had some deal with him.

Cross-inter. 40. Please answer the question which was last above asked you.

Ans. Well, I don't know as I can answer that any better than I have answerd it.

Cross-inter. 41. Do you know what is the character of R. W. Clapp for truth and veracity in the neighborhood of Lee Center?

(Objected to as improper in form and as irrelevant.)

Ans. I don't know; but his character for truth & veracity is as good as the generality of folks.

Cross-inter. 42. Was R. W. Clapp drunk or sober when you had that conversation with him?

Ans. I called him sober.

Cross-inter. 43. What were at that time his habits as to sobriety?

(Objected to as improper & irrelevant.)

264 Ans. I don't know what his habits were; he had not been here for a long time.

Cross-inter. 44. How many times during the three or four months that you say that in same years last past he has been in Lee county have you seen him drunk?

Ans. I should judge two or three times.

Cross-inter. 45. Do you not know that he is addicted to gross drunkenness and has been so for years?

(Objected to as improper and irrelevant.)

Ans. I don't know that he is subject to gross drunkenness; he has a spree now and then; he sometimes goes months & years without drinking a drop; I think his sister told me last winter that he boarded with her two years in Massachusetts and never was drunk while he was there.

Cross-inter. 46. State whether Lee Clapp was or was not present at that first conversation between you and R. W. Clapp.

Ans. I don't know whether he was or not; he was over with him once or twice, but I don't know whether at that time or not he spoke of it.

Cross-inter. 47. When, where, and to whom did you first tell what R. W. Clapp has said to you in that conversation?

Ans. I don't recollect when or where or who I told first.

Cross-inter. 48. Have you ever told it to any person before to-day?

Ans. I should presume I had.

Cross-inter. 49. Who was the first person to whom you recollect telling?

Ans. I don't recollect; the first person I told it to — Henry Clapp, and I presume I told my wife about it; I told Mr. Arnold about it some time, but I don't know when.

Cross-inter. 50. What makes you think you told it to your wife when, as you stated awhile ago, you thought she was present at the conversation?

Ans. I said I thought she was; I did not know; I would be very apt to tell her about it.

265 Cross-inter. 51. Do you recollect the fact of your ever having told it to her?

Ans. Yes; I know I told it to her; talked about it a great many times first and last.

Cross-inter. 52. How long ago was it that you remember having first told her about it?

Ans. I don't recollect how long ago it was.

Cross-inter. 53. When did you first tell it to Arnold?

Ans. I don't recollect.

Cross-inter. 54. Did you tell it to him within six months after it occurred?

Ans. I don't recollect.

Cross-inter. 55. Whereabouts did you first tell it to him?

Ans. I don't recollect where it was.

Cross-inter. 56. Why did you tell it to him?

Ans. I don't know as I know why I did tell it to him; possibly he might — asked me about it.

Cross-inter. 57. Do you recollect whether he did ask you about it?

Ans. I do not.

Cross-inter. 58. Have you talked with him about it more than once?

Ans. I presume I have; I don't recollect how many times.

Cross-inter. 59. Did you go to him or did he come to you to talk about it?

Ans. I don't think we did either; probably I went to Amboy and we happened to meet.

The examination was here adjourned by agreement until Thursday morning, September 18th, 1873, at ten o'clock a. m.

THURSDAY MORNING—10 o'clock a. m.

Cross-examination of CEPHAS CLAPP resumed:

Cross-inter. 60. Do you remember how many times you have talked with Mr. Arnold in reference to said conversation between you and R. W. Clapp?

Ans. I do not.

Cross-inter. 61. Have you talked with him about it frequently?

Ans. I think I have several times.

266 Cross-inter. 62. Have you talked with him about it at your own house?

Ans. I think not.

Cross-inter. 63. Have you talked with him about it at his house?

Ans. I have not.

Cross-inter. 64. State all the places at which you have talked with him about it.

Ans. I can't tell all the places.

Cross-inter. 65. State as many of them as you can tell.

Ans. Well, I have talked with him in Amboy; in the streets several times. I think I have talked with him once or twice in Dixon when I have met him.

Cross-inter. 66. Can you recollect any other places?

Ans. I don't recollect any other place; might or might not at some other time.

Cross-inter. 67. Have you had any correspondence with McLean, the complainant?

Ans. Not any.

Cross-inter. 68. When did you tell Henry Clapp about said conversation with R. W. Clapp?

Ans. I don't recollect when I told him.

Cross-inter. 69. Do you recollect where it was that you told him?

Ans. I should think it was in my barn that we had a conversation about it.

Cross-inter. 70. How soon was that after you had had the said conversation with R. W. Clapp?

Ans. I don't recollect how soon it was.

Cross-inter. 71. Can you now remember the name of any person to whom you told about said conversation with R. W. Clapp except your wife, Henry Clapp, and Arnold?

Ans. I think I told Egbert Shaw; I won't be certain about it. I might have told some others, but I don't recollect it.

Redirect examination:

Inter. 1st. What suit do you understand to be referred to in cross-interrogator- No. 16 as recently pending in the Lee county circuit court?

Ans. The suit of Chadwick against Edwin Clapp.

Inter. 2nd. Was the question between the parties as to the validity of conveyances to R. W. Clapp or was it a trial as to lien
267 against said premises claimed to be held by Edwin Clapp about which you was examined as a witness?

Ans. It was a claim of Edwin Clapp. He claimed a lien upon the land. That was the trial, I suppose.

Inter. 3rd. Had you acted for Edwin Clapp in any capacity in relation to said lands? If so, in what capacity and how long did you so act?

(Objected to as not being redirect examination.)

Ans. I have answered that question once. I acted as agent for him for six or seven years.

Inter. 4th. When you speak of Woodbridge or R. W. Clapp who do you mean?

Ans. I mean Ruggles Woodbridge Clapp.

Inter. 5th. When in your answer- to cross-interrogatories you speak of the "Arnold matter" to what do you refer?

Ans. To the McLean mortgage.

Inter. 6. Why do you call it the Arnold matter?

Ans. Arnold was agent for McLean and had the buisness to attend to.

The witness in his answer to the 21st interrogatory desires after hearing the same read to him to change his answer as to the last part thereof and have it read as follows: Well, I want you to keep out that "if I was to tell the whole conversation it would take me a week." I did not intend that as any part of my answer.

CEPHAS CLAPP.

Subscribed and sworn to before me this 18th day of September, A. D. 1873.

DWIGHT HEATON, *Examiner.*

268 *Testimony of Wm. B. Stewart.*

WILLIAM B. STEWART, a witness of lawful age, produced on part of complainant, after being duly sworn testified as follows, to wit:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Ans. William B. Stewart; age is sixty-six years; occupation, justice of the peace & attorney-at-law; residence, Amboy, Lee county, Illinois.

Inter. 2nd. Do you know the parties complainant and defendant to this suit or either of them, and how long have you known them respectively?

Ans. I know some of them—Henry Clapp, Chadwick, William E. Ives, Woodbridge Clapp. I knew Mrs. Woodbridge Clapp when she was alive; have known Chadwick twenty eight or nine years. Woodbridge Clapp I first got acquainted with in 1856, Henry Clapp about the same time, & Wm. E. Ives about the same time.

Inter. 3rd. How long have you resided in Amboy?

Ans. Since 1854.

Inter. 4th. Did you know one William Jones? If your answer be yea, state where you knew him and how intimately you have known him.

Ans. I have known him since 1853. He has resided most of the time in Lee county. He married my wife's sister. He is a brother-in-law. I have seen him, more or less, ten or fifteen times a year, except this last year.

Inter. 5th. Have you since 1856 been acquainted with his pecuniary and financial condition?

Ans. I think I have.

Inter. 6th. Has he or not since 1856 been in the possession of any real or personal property subject to execution?

Ans. Well, I never knew him to own more than a pair of horses and wagon & a cow. He generally rented land; come out at the end of the year poor and every year a little poorer until the last year. I don't know about that. I never knew him to own any real estate.

Inter. 7. Where is he now living, if you know?

Ans. I received a letter from his wife last week. He was
269 in Whiteside county. His post-office address is Fulton City.

Inter. 8th. Are you acquainted with certain premises in Amboy owned by Ruggles W. Clapp in 1857 and now occupied by one Briggs? If your answer be yea, state how long said Briggs (giving his full name) occupied said premises and description of the same.

Ans. I am acquainted with them. It is lot 3, in block twenty-five, in Wyman's Addition to Amboy. Mr. Clapp lived on those premises. I think he went in there in 1856; next went in was

William E. Ives. Mr. Briggs—I don't know when he went in. He was there in 1864 or 1865 and has been there ever since; full name of Briggs is James S. Briggs.

Inter. 9. What improvements were on said premises in 1856–'7 and what was the value of the said premises?

Ans. I don't see much alteration from then and now, and I think the value of the premises at that time was about two thousand dollars.

Inter. 10. Do you know of any other matter or thing touching the matters in controversy in this case tending to the advantage of the complainant? If yea, state the same as fully and — large as though you had been particularly interrogated concerning the same.

(Objected to.)

Ans. I don't know as I do.

WM. B. STUART.

Subscribed and sworn to before me this 18th day of September, A. D. 1873.

DWIGHT HEATON, *Examiner.*

Examination adjourned to September 29th, at one o'clock p. m., by agreement of parties.

SEPTEMBER 29TH, 1873—one o'clock p. m.

Examination adjourned by agreement to October 7th, 1873, at ten o'clock a. m.

270 TUESDAY, *April 17th*, 1883—9 a. m.

EGBERT SHAW, a witness produced on behalf of the complainant, being duly sworn according to law, testified in answer to questions as follows:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Answer. Egbert D. Shaw; age is forty-one; I have no particular occupation; residence is Shaw, Illinois.

Interrogatory 2nd. Do you know the parties to this suit or either and which of them, and how long have you known them respectively?

Answer. I know Lot Chadwick, Ruggles W. Clapp, and William E. Ives. I know Henry Clapp and have a slight acquaintance with William C. Depue. I don't know any of the McLeans.

Interrogatory 3rd. Are you acquainted with the farm situated in sections 28, 33, & 34, town. twenty-one, range eleven, in Lee county, and now being worked by defendant William C. Depue, and described in a mortgage from Ruggles W. Clapp to Edwin W. McLean, referred to in the original bill in this cause?

Ans. I am not familiar with the numbers, but I am acquainted with the property to which I suppose you refer.

Inter. 4th. How far is this farm from the village of Lee Center in said county?

Ans. In a direct line, three miles; by the highway, four miles.

Inter. 5th. Have you resided in or near said village; and, if so, for what lenght of time?

Ans. I resided in the village of Lee Center from 1856 to 1874 most of the time.

Inter. 6th. In what buisness were you engaged during those years and in what buisness was defendant Chadwick at the same time employed?

Ans. I was engaged in no buisness for myself until the spring of 1864. I was then engaged in the live-stock buisness in Lee
271 Center until I left the place. I do not remember when Mr. Chadwick moved to the village from his farm near by, but when I returned from the army in the spring of 1863 he was postmaster at the place and continued to hold the office for perhaps five years.

Inter. 7. State where, if you know, defendant Henry Clapp was residing during the years that you lived at the village.

Ans. I think most of the time on the farm that you have referred to, although he may have resided in the village of Lee Center for a short time, and was in the army about a year. Upon reflection I recall the fact that he did reside in the village for a considerable lenght of time.

Inter. 8. From your first acquaintance with defendant Chadwick what have been your relations with and towards him?

Ans. I canno- say from my first acquaintance. He is an old settler and so am I. But I remember particularly from the year 1864 to the year 1867 we were very familiar.

Inter. 9. How often during those years were you in the habit of meeting him, and what was the extent during those years of your connection and intercourse with him?

(Objected to by def'ts' counsel.)

Ans. I met him nearly every day and conversed with him upon every current subject, and my buisness habits were such that I could. I was desirous of counsel and information, and he was the best informed man that I had ever met with.

Inter. 10. At what places in Lee Center were you in the habit of thus meeting and conversing with him?

Ans. At my father's store, at the post office, at the library, and the literary societies; mostly at the store.

Inter. 11. Can you state approximately how often you thus met him?

Ans. I have already said almost every day. I have no hesitancy in saying so.

Inter. 12. How large was the village of Lee Center in those days?

272 Ans. Five hundred inhabitants—about.

Inter. 13. Where and from what source did you first learn of the mortgage from Ruggles W. Clapp to Edwin W. McLean, involved in this suit?

(Objected to.)

Ans. I cannot specify as clearly as you do about this mortgage. I heard about the claim I suppose you refer to when I came out of the army, in 1863. The source was common talk; that is all I can say.

Inter. 14. What claim or mortgage do you understand to be involved in this suit?

(Objected to for the reason it assumes the witness understands a mortgage to be involved in this suit when he has not so testified.)

Ans. I understand it is a claim of McLean or his heirs against the property that has been described.

Inter. 15. State about how frequently and at what places and by whom you heard the matter referred to in your last answer talked about.

(Objected to.)

Ans. It was understood in Lee Center at the time referred to that R. W. Clapp was a bold and crooked operator—in fact, an enterprising villian. It was generally talked that he had swindled a merchant in Amboy; that he had given him notes secured by mortgage on what was called the Henry Clapp property and by some swindle had got them up and given worthless one- in lieu of the same.

(Objected to.)

Inter. 16. Can you state what sources this understanding was derived? If so, give the same in detail.

(Objected to.)

Ans. No; I cannot, only it arose naturally out of the transactions. I can't say where I first heard it. I heard Louis Clapp joke about it often in my father's store; also heard Lee Clapp and Cephas
273 Clapp speak of it very often; heard my father speak of it. Woodbridge Clapp himself told me such was the fact.

(Answer objected to.)

Inter. 17. Do you know whether defendant Chadwick knew of the report and understanding you have referred to?

Ans. I only know from inference that every one must know who was as well informed as he. I can't remember specially that I talked with him about the subject, though I have no doubt that I did.

(Answer objected to.)

Inter. 18. Do you know what merchant was meant as the one referred to in your fifteenth answer?

(Objected to.)

Ans. I know now his name was McLean. Whether I knew then, I don't know.

Inter. 19. Did you have any understanding as to whom the makers of the notes mentioned in your fifteenth answer as worthless —?

(Objected to.)

Ans. Yes; that is what Lewis Clapp joked about. Some of the notes were given by Curtis Cannon, and he was a tramp. Other notes were given by one Craig, who never has had anything ahead since I have known him, and my farm joined him.

(Answer objected to.)

Inter. 20. If you were acquainted with Cannon and Craig, state how long you knew them, what their respective occupations were, and their financial ability.

Ans. As to Cannon, I knew him when I saw him; have known of him probably thirty years. He was simply a worthless fellow without occupation—hardly half witted. His sister told me he was a tramp. Craig was a good citizen, but financially poor. He was a farmer, I think. I have known him since he came into the country.

(Answer objected to.)

Inter. 21. What property do you refer to in your fifteenth answer as the Henry Clapp farm?

Ans. I cannot designate by numbers, but it is the property that Henry Clapp took up from the Government. His father furnished him means for it—the same property that has been in litigation
274 between E. L. Clapp, R. W. Clapp, Henry Clapp, Edwin Clapp, Lot Chadwick, and E. W. McLean.

Inter. 22. Can you not, by reference to a map of Lee county, locate the same and state in what section it lies?

Ans. It will — according to where the map was laid out.

(Witness here looked & examined a Lee county atlas, made in 1872.)

It appears from the map that 80 acres are located in section 33, also 80 acres more in section 33; there are three eighties in section 33, one eighty in 34, and one eighty in 28, another 40 in 33, and a 40 in 34.

Inter. 23. Are you acquainted with Martin L. Arnold; and, if so, how long have you known him?

Ans. I am acquainted with him; cannot say when the acquaintance began. I cannot say how long I have known him. I have probably had a passing acquaintance with him ever since the town of Amboy was started.

Inter. 24. Do you remember of his calling at your place in the winter of 1867 or the spring of 1868 on business relating to the claim of Edwin W. McLean against Ruggles W. Clapp?

Ans. I do.

Inter. 25. Did he have any papers with him relating thereto?

Ans. I presume he did. I don't remember definitely about that.

(Answer objected to.)

Inter. 26. Did he say anything in reference to his seeing defendant Chadwick on the subject? If so, state what he said.

(Objected to.)

Ans. He did. He said he was going to see Chadwick and see what they were going to do about it; that it had got to be made right and he should never drop it until it was.

Inter. 27. Do you know whether he went to defendant Chadwick's?

Ans. I know that he did.

Inter. 28. How soon after telling you that he intended to do so?

(Objected to.)

Ans. Immediately upon leaving my house that day.

Inter. 29. How do you know and what reason have you to
275 remember that he went there, as you have stated?

(Objected to as incompetent on a direct examination.)

Ans. I know bec-use I watched him go there. There was different litigating pending and proceeding at the time relative to this property, and I was curious to know, being connected with the family, if Arnold was going to follow the course he said he was going to at my house.

Inter. 30. Did you ever have any conversation with defendant Ruggles W. Clapp in reference to any bargain or arrangement between him and defendant Ives as to the surrender of notes given by said Clapp to Edwin W. McLean? If so, please state in detail the whole of such conversation.

(Objected to.)

Ans. I wish you would be kind enough to withdraw that question. I cannot answer it without hurting myself.

Inter. 31. In what respect might it hurt or effect you?

Ans. I do not mean that it would implicate me in any misdemeanor; it might hurt my present buisness relations.

Inter. 32. I must insist on an answer to my thirtieth interrogatory. Please answer.

(Objected to.)

Ans. Has any one authority to make me answer? I will give one single answer to it and no more, unless I am compelled to. Woodbridge Clapp has often told me that he gave W. E. Ives a house and lot in Amboy as a bonus to effect the exchange of good notes for worthless ones in the McLean matter.

Inter. 33. Are you acquainted with the values, on or about March, 1869, of real estate in the vicinity of the Henry Clapp farm, as apready described by you?

Ans. Yes, sir.

Inter. 34. State what was the value, in March, 1869, according to your best judgment, of this farm per acre in its then condition.

Ans. I have not known of any land in the town of Brad-
276 ford, where this is situated, to be sold for less than forty dollars per acre since 1856, excepting swamp land, wholly unimproved land, or some very objectionable piece. This was considered an extra farm; it must have been worth forty dollars per acre in cash.

(Answer objected to.)

Inter. 35. Are you related or connected by marriage or otherwise with any of the parties to this suit; if so, in what manner, and with what ones?

Ans. Henry Clapp's daughter is my wife.

Inter. 36. Is she a daughter by his first or his present wife?

Ans. By his first wife.

Inter. 37. Of whom is Henry Clapp's present wife the daughter?

Ans. Of Lot Chadwick.

Inter. 38. About what time was she married?

Ans. I think in the autumn of 1866.

Inter. 39. When did your wife's mother die?

Ans. I think about three months before this event. I cannot say definitely.

Inter. 40. Before what event?

Ans. Before the marriage, in the autumn of 1866.

Cross-examination:

Cross-interrogatory 1st. When did you become acquainted with Curtis Cannon?

Ans. I can't say that I ever become acquainted with him. I knew him when I saw him; perhaps I passed the time a day with him a few times.

Cross-inter. 2. When did your knowledge of him begin?

Ans. I had no particular knowledge of him. I simply heard of him as a laughing-stock for the last twenty-five or thirty years.

(Answer objected to as not responsive.)

Cross-inter. 3. In your second answer you said I knew him when I saw him. When did that knowledge of him begin?

Ans. I can't say. I presume about the time *the time* the city of Amboy began to build up. It might have been somewhat later.

277 Cross-inter. 4. Please tell me what your present remembrance is of the year when you first knew him.

Ans. I should say 1856, but could not be at all definite.

Cross-inter. 5. Do you know where he lived then?

Ans. I always heard he lived near the brick yard, southeast of Amboy a couple of miles.

Cross-inter. 6. Did you know then what property, if any, he owned? I ask only for your own personal knowledge and not rumor.

Ans. No, sir; I know nothing of my own personal knowledge of his property.

Cross-inter. 7. Is it not true that you have no personal knowledge about his property at any time since you have known of him?

Ans. It is true.

Cross-inter 8. What litigation do you refer to in your answer to the 29th direct interrogatory?

Ans. E. L. Clapp's attachment and Edwin Clapp's suit.

Cross-inter. 9. Edwin Clapp's suit with whom?

Ans. Lot Chadwick or with parties interested in the land in controversy. I do not know that that suit was then brought, but I think it was pending.

Cross-inter. 10. When did you have a conversation with Woodbridge Clapp referred to in your answer to 16th direct interrogatory?

Ans. It was some years after the conversation I had with others with reference to it.

Cross-inter. 11. Tell me, as well as you are able, the year.

Ans. It was in the spring of 1872, when Woodbridge Clapp was living at my house.

Cross-inter. 12. How long did he live at your house?

Ans. He was stranded there a couple of months.

Cross-inter. 13. Was it during that same time that he told you what you related about the arrangement he made with Mr. Ives to accomplish the surrender of the McLean note?

Ans. It was; but upon reflection I think he told me all this some years previously, when he was out to Lee Center upon another occasion.

Cross-inter. 14. When was that other occasion?

Ans. I think about four or five years previous to 1872.

278 This, however, I only just thought of this moment.

Cross-inter. 15. How long was he in Lee Center then?

Ans. Only a short time, and was not at my house.

Cross-inter. 16. Where did he stop then?

Ans. At E. L. Clapp's.

Cross-inter. 17. Are those the only times when R. W. Clapp told you what you have related?

Ans. No, sir.

Cross-inter. 18. On what other occasions?

Ans. I went with him to Cincinnati, I think, in 1875. Suppose he told me then, as he was always speaking of it. He also referred to the same matter a few days ago.

Cross-inter. 19. Where?

Ans. Between my house and Shabona, Illinois, on the train.

Cross-inter. 20. Did you go to Cincinnati with him in 1875 concerning business in which you and he were associated?

Ans. I can't answer that by yes or no. I have to explain. I went there with him to get some iron for a railroad. He was going to trade a coal mine for it. We were not connected any farther than that. He failed to make the trade. That is all.

Cross-inter. 21. Where did you meet him recently, when you conversed upon the same topic?

Ans. He came to my house. He simply referred to it.

Cross-inter. 22. What property did Cyrus Craig own in 1856? I ask only for your own personal knowledge.

Ans. I do not know.

Cross-inter. 23. Do you of your own knowledge know what he owned in any year since 1856?

Ans. I do not know what you call of my own knowledge. I never took a list of his property. It appears that he never dared own anything since I have known him. He had a piece of land adjoining me when he died, but the title proved to be in his wife and the boys, so far as I have ever heard.

(Answer objected to as not responsive.)

279 Cross-inter. 24. Do you think now, after a lapse of about twenty-seven years, that you can, with any certainty, state the financial condition and general reputation of the financial condition of a man whom you knew when you were but fourteen years old?

Ans. Yes, sir; I can state the financial reputation in this instance with certainty, specially that of Curtis Cannon, because hearing him laughed about so much impressed it upon my mind.

Cross-inter 25. Where were you living in 1856?

Ans. I think I moved to Lee Center that year.

Cross-inter. 26. Was it not after your return from the army that you heard the financial standing of Cannon discussed?

Ans. It was after that that I heard it about the McLean claim; but I heard of him as a shifteless, worthless fellow ever since I heard anything of him.

Cross-inter. 27. What land in Bradford have you knowledge of the sale of in the year 1869?

Ans. I don't know that I now can fix the sale of a single piece within that year.

Cross-inter 28. Or in 1868?

Ans. I can't fix the date so clear as that of any I have in mind. Several pieces sold about that time.

Cross-inter. 29. By whom, to whom, and what quantity each?

Ans. By J. M. Shaw to W. S. Frost, 80 acres; by W. S. Frost to Dagner, 80 acres; by John L. Shaw to William Ross, 80 acres; by E. L. Clapp to John Wing, 40 acres. That is all I recall at present.

Cross-inter. 30. Do you remember a sale of 80 acres in that town by Lewis Clapp to George Warwick?

Ans. No, sir; don't know that I ever knew of it.

Cross-inter. 31st. Are your relations with Lot Chadwick and Henry Clapp friendly or otherwise?

Ans. I can't answer for them. I have nothing to do with
280 them, but have no malice towards any of them.

Cross-inter. 32. When did your intimate relations with Lot Chadwick cease?

Ans. Probably about the spring of 1867.

Redirect examination:

Interrogatory 1. How near to the Henry Clapp land are the sev-

Cross-inter. 7. Is it not true that you have no personal knowledge about his property at any time since you have known of him?

Ans. It is true.

Cross-inter 8. What litigation do you refer to in your answer to the 29th direct interrogatory?

Ans. E. L. Clapp's attachment and Edwin Clapp's suit.

Cross-inter. 9. Edwin Clapp's suit with whom?

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Cross-inter. 10. When did you have a conversation with Woodbridge Clapp referred to in your answer to 16th direct interrogatory?

Ans. It was some years after the conversation I had with others with reference to it.

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Ans. It was in the spring of 1872, when Woodbridge Clapp was living at my house.

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(Answer objected to as not responsive.)

279 Cross-inter. 24. Do you think now, after a lapse of about twenty-seven years, that you can, with any certainty, state the financial condition and general reputation of the financial condition of a man whom you knew when you were but fourteen years old?

Ans. Yes, sir; I can state the financial reputation in this instance with certainty, specially that of Curtis Cannon, because hearing him laughed about so much impressed it upon my mind.

Cross-inter 25. Where were you living in 1856?

Ans. I think I moved to Lee Center that year.

Cross-inter. 26. Was it not after your return from the army that you heard the financial standing of Cannon discussed?

Ans. It was after that that I heard it about the McLean claim; but I heard of him as a shifteless, worthless fellow ever since I heard anything of him.

Cross-inter. 27. What land in Bradford have you knowledge of the sale of in the year 1869?

Ans. I don't know that I now can fix the sale of a single piece within that year.

Cross-inter. 28. Or in 1868?

Ans. I can't fix the date so clear as that of any I have in mind. Several pieces sold about that time.

Cross-inter. 29. By whom, to whom, and what quantity each?

Ans. By J. M. Shaw to W. S. Frost, 80 acres; by W. S. Frost to Dagner, 80 acres; by John L. Shaw to William Ross, 80 acres; by E. L. Clapp to John Wing, 40 acres. That is all I recall at present.

Cross-inter. 30. Do you remember a sale of 80 acres in that town by Lewis Clapp to George Warwick?

Ans. No, sir; don't know that I ever knew of it.

Cross-inter. 31st. Are your relations with Lot Chadwick and Henry Clapp friendly or otherwise?

Ans. I can't answer for them. I have nothing to do with
280 them, but have no malice towards any of them.

Cross-inter. 32. When did your intimate relations with Lot Chadwick cease?

Ans. Probably about the spring of 1867.

Redirect examination:

Interrogatory 1. How near to the Henry Clapp land are the sev-

eral tracts referred to in your answer to the 29th cross-interrogatory?

Ans. Two and one-half miles.

Inter. 2. Are they all within that distance?

Ans. One of them perhaps a little nearer, the others perhaps a little further.

E. D. SHAW.

Subscribed and sworn to before me this 17th day of April, A. D. 1883.

DWIGHT HEATON, *Examiner.*

281 APRIL 17, 1883.

FLETCHER D. CLAPP, a witness produced on behalf of the complainant, being duly sworn according to law, in answer to questions, testified as follows:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Answer. Fletcher D. Clapp is my name. My parents, at last term of court, swore that I was 26 years old in a case that was there. I am in the general merchandise and grain business. Residence is Shaw Station, Lee county, Illinois.

Inter. 2. Do you know the parties to this suit or either and which of them, and how long have you known them respectively?

Ans. Henry Clapp is my father, Ruggles W. Clapp is my uncle, and Lot Chadwick is my grandfather. Being father of my stepmother, I used to call him that. I have a slight acquaintance with William E. Ives, Amboy. Those are all the parties that I know.

Inter. 3. How long have you resided in Lee county?

Ans. Excepting five years when I was gone, I have always resided in Lee county.

Inter. 4. In what year did your father marry his second wife—your stepmother?

Ans. In the fall of 1866.

Inter. 5. With whom did you then live?

Ans. With my father.

Inter. 6. How long did you continue to live with him after this marriage?

Ans. Until the spring of 1873.

Inter. 7. On what place did you live during those years, and of whom did your family consist?

Ans. On my father's place in Bradford, and family consisted of my father, stepmother, and myself. Part of the time a sister of my stepmother's lived at our house.

Inter. 8. State in what sections your father's place was located.

Ans. I don't believe I can without looking at a map.

Inter 9th. You have heard the testimony of Egbert D. Shaw. Can you say whether it is the same farm he referred to as your father's?

Ans. Yes, sir; I believe it is.

282 Inter. 10. Have you ever heard of a mortgage given by Ruggles W. Clapp to Edwin W. McLean on all or part of this farm? If so, state when and from whom you first heard of it.

Ans. I first heard my father and stepmother talking it over. It was in the fall or winter of 1867 that I remember anything about——

Inter. 11. State what was said by them on the subject.

(Objected to.)

Ans. My father was explaining to my stepmother how the farm came to be in Ruggles W. Clapp's name. They were getting ready to go East to get the deed in my father's name.

Inter. 12. Can you recall what he said in explaining it to her? If so, please state it.

Ans. I cannot in the exact language, but can the way I understood it then.

Inter. 13. Give your understanding of it, of what was then said.

(Objected to.)

Ans. The title of the land, the home that we lived on, there was some trouble about it, and my stepmother was urging my father to go East and get it into his own hand by getting a deed from my uncle Woodbridge.

Int. 14. Did they go East; and, if so, at what time?

Ans. They went East in the winter of 1867.

Inter. 15. Where did you stay during their absence and when did they return?

Ans. I staid at my grandfather's, Mr. Chadwick's. They returned, I think, along about February or March of the next year, 1868.

Inter. 16. While staying at your grandfather's did you hear him say anything in reference to the mortgage from Woodbridge to McLean? If so, please state what it was.

Ans. I did not hear him say anything until they came back from the East, and they brought up the subject themselves.

Inter. 17th. How soon after their return was the subject brought up?

Ans. Within a day or two.

283 Inter. 18. Had you returned to your own home or were you still at Mr. Chadwick's?

Ans. We were still as Mr. Chadwick's.

Inter. 19. How long did yourself, father, & stepmother continue with Mr. Chadwick?

Ans. A week—about a week.

Inter. 20. What was said on the subject by Mr. Chadwick or your father and stepmother in the presence of Mr. Chadwick, during this week, in reference to the McLean mortgage?

Ans. My father and stepmother were talking to Mr. Chadwick and seemed to think that they had got it—the title—all clear on the farm excepting a certain claim held by a man by name of McLean, and that a man in Amboy by the name of Arnold had this claim in hands as agent or was attending to it, and they had seen this Arnold

and expected him up in a few days, and they wanted Mr. Chadwick, my grandfather, to look over the papers and give them his opinion on them, as that was the only thing that seemed to worry them, as my father thought the claim that was held by Edwin Clapp, of Pittsfield, could be settled by paying the original amount of the note of twenty-five or six hundred dollars, as my grandfather Clapp had made a will he was to have up his notes that Edwin Clapp held in trust, and seemed to think if this matter of Mr. McLean was settled with Mr. Arnold why they would be all right with reference to the place.

(Answer objected to.)

Inter. 21. Was Mr. Arnold at Mr. Chadwick's place during the week after your father's return that you remained there?

Ans. He was.

Inter. 22. Do you know whether or not he talked with Mr. Chadwick or in his presence in reference to the McLean mortgage? If so, state what was said by him or between them on the subject.

Ans. He, Mr. Arnold, talked with my father and step-
284 mother, and Mr. Chadwick was present at their request, as they had been looking—my father had been looking for Mr. Arnold to come up, and wanted Mr. Chadwick's opinion on the matter. I do not remember the entire conversation, but I was in the room, and I looked upon Mr. Arnold as a man that had some power. I did not know then the purport of it, but knew that my father feared him for the claim he held. I heard Mr. Arnold tell Mr. Chardick and my father that he was willing to do what was right on it, and he had some papers with him, legal papers, I should judge, and he showed those papers to my father and to Mr. Chadwick. Mr. Chadwick took the papers and examined them, to all appearances, very carefully, and I heard my father tell Mr. Arnold, in the hearing of Mr. Chadwick, that they ought to get something out of Woodbridge Clapp, and that he wanted to straighten the matter right up and get that claim off from his farm. He, my father, said in presence of Mr. Chadwick to Mr. Arnold that Woodbridge had not ought to have gone off and left such a claim hanging over "my farm," was the words he used.

(Answer objected to.)

Inter. 28. Was anything said on the occasion referred to in your last answer respecting the notes secured by the mortgage given by Woodbridge to McLean? If so, state what was said upon the subject by or in the presence of Mr. Chadwick.

Ans. I remember my father saying he asked what the difference would be, as he said he had the notes, but the mortgage was still on—something to that effect—and Mr. Chadwick told my father that if those notes were fraudulently got up that it would make no difference; the mortgage would hold the land. My father asked Mr. Chadwick if he did not think by Mr. Arnold's talk that it could be settled without going into law about it, and Mr. Chadwick
285 told him that his advice would be to settle the matter as quick

as he could, and that he always avoided going to law when a man was willing to settle for what was right, and by Mr. Arnold's talk he seemed to be willing to do what was fair.

(Objected to.)

Examination adjourned until eight 30 a. m., Wednesday morning, April 18th, 1883.

WEDNESDAY, *April 18th*—8.30 a. m.

Examination of FLECTHER D. CLAPP resumed:

Inter. 24. After Mr. Arnold left Mr. Chadwick's place on the day referred to did you hear any conversation between Mr. Chadwick and your father and stepmother? If so, relate the same as near as you can.

Ans. The conversation related in my last answer occurred after Mr. Arnold had left. That is all that I heard that day.

Inter. 25. Did you hear any conversation between them after this relating to the McLean mortgage? If so, relate the same as near as you can.

Ans. There was a great many conversations during the year that they were trying the E. L. Clapp case, and we staid at Mr. Chadwick's house a good deal of the time while they would be going to and from attending court, and they — always talking about the matter and asking his opinion and getting him to examine various papers pertaining to the case, and as everything that they had in the world depended upon those decisions they were very anxious about the matter. I can't recall any particular thing said about the McLean mortgage, but know I heard conversations about it.

(Answer objected to as not responsive and immaterial.)

Inter. 26. Were you present at any of the negotiations or talks between Mr. Chadwick, your father, and stepmother in relation to the transfer of the farm to Mr. Chadwick? If so, state as
286 nearly as you can, in the order in which it occurred, all that was said and done between them in your presence on the subject.

Ans. I was there the morning my father deeded the place to Mr. Chadwick. He had been to Amboy for several days and had been drinking hard, and my stepmother and myself went to Amboy and got him that morning. I heard them speaking as though the sheriff was to sell the place on a judgment for six hundred dollars, and my father wanted to borrow the money and mortgage the coming crops, and Mr. Chadwick said he would not let him have the money unless he would put the place in his name, and my father was pale and excited and said that he wanted to keep his own property in his own name, as it — always been until the last year in some one else's, and he said the crops would be perfect security, and that surely his thirds would be worth fifteen hundred dollars; but Mr. Chadwick said he would not advance the money unless he would deed the entire property to him. My father said he would go down and see Cephas

Clapp and he would let him have the money. My stepmother told him to hold on and she would send for some wine, and that after he drank that he would not feel so nervous. They got some wine, and then they sent for a justice after he had drank some and made out the deed. I was in the room when they were drawing the papers and saw some money and papers they called bonds; saw my father sign the deed, and then we went home to the farm. My father told Mr. Chadwick that when they got this matter straightened up that he was to deed my stepmother a hundred acres of land. She said she did not ask but for forty; but my father said she was a trump and should have a hundred. She asked him how much that would be worth, & he said it would be worth four thousand dollars. He told Mr. Chadwick that he wanted him to do that, and when we
287 got matters all settled up he wanted the balance back. Mr. Chadwick said, I will take this, Mr. Clapp, and shall do what is right with you when I get matters straightened up. My father then told Mr. Chadwick that he wanted him to take entire charge of the money that came from the crops and do as Cephas Clapp had been doing for years, and he would pay him three dollars a day for what time he put in in looking after matters. Mr Chadwick then took this money and these papers which they called bonds after Mr. Bodine, the justice of the peace who drew the deed, had gone away. He, Mr. Chadwick, took the money and bonds and took them into his bed-room. My father, stepmother, and myself went home. That is all that I heard.

(Answer objected to.)

Inter. 27. What money and bonds do you refer to as having been taken by Mr. Chadwick after Mr. Bodine went away?

(Objected to.)

Ans. It was money and bonds that Mr. Chadwick was to pretend to pay my father for this farm before Mr. Bodine.

(Answer objected to.)

Inter. 28. What, if anything, had been said or done with the money and bonds in Mr. Chadwick's presence while Mr. Bodine was there?

(Objected to.)

Ans. Mr. Chadwick counted out the money and bonds and some other papers, one or two, and laid them on the table, and they laid there on the table until Mr. Bodine had gone, and then Mr. Chadwick gathered them up and all other papers and took them into his room, as I have heretofore stated.

(Answer objected to.)

Inter. 29. Did any portion of the transactions or conversations detailed in your 26 answer take place in the absence of Mr. Chadwick. If so, please state what portions.

(Objected to.)

288 Ans. No, sir; Mr. Chadwick was there all of the time.

Inter. 30. Where did the conversations and transactions therein referred to take place?

Ans. In Mr. Chadwick's sitting-room.

Inter. 31. Did it all occur on the same day or on different days?

Ans. It all occurred on the same day.

Inter. 32. Do you remember what, if anything, was said on that occasion as to the particular matters that were to be settled by or between your father and Mr. Chadwick before Mr. Chadwick's conveyance back of any of the farm either to your father or to your stepmother?

(Objected to.)

Ans. Mr. Chadwick was to pay a judgment to E. L. Clapp and to pay some back taxes, and then, my father said, they could compromise the McLean case with Arnold and could settle what he owed his father with Edwin Clapp, and those were all the claims that I heard of except something about a small claim he owed on a reaper and a store debt. That was all that I heard of.

(Answer objected to.)

Inter. 33. When and where and in whose presence did you hear the matter related in your last answer?

(Objected to.)

Ans. It was the same day, right after Mr. Bodine had left Mr. Chadwick's house, and we were getting ready to start for home. Mr. Chadwick, my father, stepmother, and myself were present.

Inter. 34. Was there anything said on the occasion referred to in your last answer between your father and Mr. Chadwick as to keeping an account by Mr. Chadwick of the money received and paid out by Mr. Chadwick? If so, what was said on the subject?

(Objected to.)

289 Ans. Mr. Chadwick said he would keep a straight account of every dollar "I receive from the place, Mr. Clapp, and shall charge you for what monies I pay out for you, and shall charge you interest, and charge one dollar and a half for every day that I put in attend-ng to this buisness." He told my father that three dollars a day was too much.

(Answer objected to.)

Inter. 35. What were your father's habits at this time in reference to the use of intoxicating liquor?

(Objected to.)

Ans. He was a hard drinker whenever he could get it, and had been away on a spree for several days before the morning we brought him up from Amboy and he deeded his farm to Mr. Chadwick.

Inter. 36. What was his condition as to his being sober or intoxicated at the time he executed the deed to Mr. Chadwick?

Ans. He had been drinking some and was getting over several days' hard drinking.

Inter. 37. Do you know of your father's at that time ow-ing any other real estate than the farm you have referred to?

Ans. No, sir; he did not.

Inter. 38. Can you state the nature and probable value of the personal property owned by him at that time?

Ans. He had a span of horses worth a hundred and fifty dollars, wagon and harness for which he paid forty the year previous, and one cow, was all.

Inter. 39. For what length of time—to what date—did your father continue to occupy the farm as his home?

Ans. Until the fall of 1875. He always lived on the farm until October, 1875.

Inter. 40. Where did he go on leaving the farm in 1875?

(Objected to.)

Ans. His house burned down in 1875, and he went to Nebraska.

Inter. 41. How long did he remain in Nebraska?

(Objected to.)

Ans. About a year and a half, I should think.

290 Inter. 42. To what place did he move on leaving that State?

(Objected to.)

Ans. To Red Oak, Iowa.

Inter. 43. How long did he remain there?

(Objected to.)

Ans. Pretty near — year.

Inter. 44. Where did he move on leaving Red Oak?

(Objected to.)

Ans. To Chicago.

Inter. 45. How long did he live in Chicago?

(Objected to.)

Ans. Nearly a year.

Inter. 46. To what place did he move from Chicago?

(Objected to.)

Ans. To Mendota, Illinois.

Inter. 47. How long did he remain there?

(Objected to.)

Ans. Nearly two years.

Inter. 48. Where did he move to from the latter place?

(Objected to.)

Ans. I think he moved directly to Lee Center, but I am not

positive; but they came to Lee Center nearly a year ago; cannot state the exact time.

Inter. 49. Can you state from what source your father and his family derived their means of support from the date of the deed to the farm from him to Mr. Ch-dwick until he left the farm, in 1875? If so, state all you know on the subject.

(Objected to.)

Ans. Whenever my father or the family wanted anything they went to Mr. Chadwick and told him, and Mr. Chadwick would go to the market and store and buy it and pay for it with monies he carried in his pocket from his pocket.

Inter. 50. Do you know of their deriving means of support from any other source during that time?

(Objected to.)

Ans. No, sir; they did not, to my knowledge, have any other means of support.

Inter. 51. After the execution of the deed from your father to Mr. Chadwick did you do any work on the farm? If so, state the nature and extent of the same.

(Objected to.)

291 Ans. I done the chores and most of the house-work, as my stepmother was interested in the lawsuits that were going on then, and she was busy in looking up old papers and talking with father about these lawsuits. That is all the work I ever done.

(Answer objected to.)

Inter. 52. Have you any knowledge as to the source from which your father derived his means of support after leaving the farm, in 1875? If so, state your knowledge on the subject.

(Objected to.)

Ans. While he was in Nebraska money was sent to him by Mr. Chadwick to the postmaster at the place where we lived and by him given and directed inside to us. They did not want my father's whereabouts known at Red Oak. My stepmother came back home after money from her father, Mr. Chadwick.

(Answer object- to.)

Inter. 53. Do you know whether your stepmother received any money from her father when she went after it, as stated in your last answer?

(Objected to.)

Ans. She returned with money, and she said that her father told her that that must last them for the family until after harvest, as he had used up all of the last year's crops and would have to take some of his own money if we used that up before harvest, and I supposed she got her money where she said she did.

(Objected to.)

Inter. 54. When did you discontinue living in your father's family and where was he residing at the time?

Ans. I first left home in March, 1873, but have lived to home at dif-erent times until some five years ago. My father was living on the farm until I first left. I lived with him in Nebraska the winter of 1875 & '6, and lived with him in Red Oak the fall of 1876, and I have been to his house every little since.

Inter 55. In what buisness was your father engaged in
292 Nebraska, and at what place?

(Objected to.)

Ans. He did not have any buisness and has not had any buisness, to my knowledge, since he left the farm, and has not done a day's work since he left the farm he was — at Wilsonville, Nebraska.

Inter. 56. In what county?

Ans. In Furnas county.

Inter. 57. Were you present at Ephraim Whitney's at a conversation between him and your stepmother respecting the McLean mortgage? If so, what was said between them on the subject?

(Objected to.)

Ans. My stepmother and myself walked over to Mr. Whitney's in the night to get Mr. Whitney to go and see Mr. Arnold and find out what the McLean claim could be settled for. My father and stepmother had talked of the matter a great deal and had went down and talked with Mr. Chadwick, but do not know what Mr. Chadwick said; but they, my father & stepmother, came back from seeing Mr. Chadwick, and my father and stepmother said Mr. Whitney would be a good man to send to Arnold, and Mr. Whitney came over to our house, at my stepmother's request, and they told Mr. Whitney to offer Mr. Arnold one thousand dollars and, if need be, two thousand dollars, and told Mr. Whitney they would give him one hundred dollars for his trouble, and they said among themselves they would rather pay five thousand and get the matter settled up. That is all.

(Answer objected to.)

Inter. 58. My last interrogatory referred to a conversation at Mr. Whitney's house. I again ask, Were you present at his house at a conversation between him and your stepmother respecting the McLean mortgage? If so, state all that was said between them on the subject.

(Objected to.)

Ans. She told Mr. Whitney the first time to go and see Mr. Arnold, as I stated in my previous answer, and the last time we
293 went to his house to find out the results of his interview with Mr. Arnold, and my stepmother told Mr. Whitney that if they could settle that McLean case that, as my father could not hold property in his own name, she wanted Mr. Whitney to get his

son-in-law, Charles Chadwick, her brother, to came up from Missouri and take the place, and she would try and persuade my father to deed the place to him. I heard Mr. Whitney say that he had been to see Arnold, but that Mr. Arnold would settle upon such terms—what terms I do not know, as I was not there; I went out—but my father said he would not trust twenty thousand dollars' worth of property in Charles Chadwick's hands. That was when my stepmother suggested Charles Chadwick's coming up there.

(Objected to.)

Inter. 59. When and where did the conversation between your stepmother and Mr. Whitney referred to in your last answer take place?

Ans. The first part of it took place at his house. He brought us home, and the last part took place at my father's house. I think it was during the summer of 1868.

Inter. 60. Did you hear your stepmother or Mr. Chadwick saying anything in reference to getting your father to swear in any particular way as to the McLean matter? If so, state when and what was said on the subject.

(Objected to.)

Ans. I heard Mr. Chadwick say that my father would have to swear that the sale to him was *bona fide* to protect themselves on the case of Edwin Clapp against the farm, because Mr. Chadwick had been obliged to swear to that, and Mr. Chadwick said that he did not want to injure his good name. I heard my stepmother say that we must hang onto my father and not let him see any of his relatives until after he had given in his depositions on both of these cases, and if he once committed himself he could go to hell, if he wanted to, for all that she cared.

294 (Objected to as not responsive and irrelevant.)

Inter. 61. Give the full names of the persons you have referred to as Mr. Arnold and Mr. Chadwick.

Answer. I believe Mr. Arnold is Martin L. Arnold; Mr. Chadwick's name is Lot Chadwick, I believe.

Inter. 62. What was your age at the time your father executed the deed to Mr. Chadwick?

Ans. I was little past twelve years old.

Inter. 63. Can you state any reason why at that age the occurrences you have related made an impression on your mind and why you could then understand and are now able to recall the same?

(Objected to as leading & otherwise incompetent.)

Ans. Yes, sir; I can from the time my father married my stepmother. In 1866 up to the time I left home in 1873 I never went to school a single day; never was allowed any playmates. We lived away from neighbors on a lonely farm, and if any boy came there to play my father would send him home and I would be called into the house. I very seldom went to a neighbor's house; never went

to a church or anywhere, in fact; was not allowed to speak to my sisters if we should meet them, and being with those two people and not being allowed to read books or papers and doing the housework I heard their conversation, which nearly all the time pertained to these lawsuits, and hearing them talked so much about and having nothing else to detract my mind I paid attention and took a great deal of interest in them; how they were getting along. That is the only reason that I know of.

(Answer objected to as not responsive, irrelevant, and immaterial.)

Cross-examination:

Cross-interrogatory 1. How long have you lived at Shaw Station?
Answer. About four years.
Cross-inter. 2. With whom?
295 Ans. I have boarded with my sister, Mrs. Shaw.
Cross-inter. 3. Wife of Egbert D. Shaw?
Ans. Yes, sir.
Cross-inter. 4. Do you know a person who once taught school at Lee Center named Nettleton?
Ans. Yes, sir.
Cross-inter. 5. What was the full name of that person?
Ans. I do not know.
Cross-inter. 6. Is that person a man or woman?
Ans. There were two teachers there that taught by that name; one was a man, the other was a woman.
Cross-inter. 7. Do you adhere to the statement given in answer to the last direct interrogatory that from 1866 to 1873 you never went to school a single day?
Ans. No, sir; I do not.
Cross-inter. 9. Do you adhere to the statement that during that time you never went to church or anywhere, in fact?
Ans. I except about ten months' time that I ran away from home, from August to the next spring, June. I ran away to my sister's, and she sent me to my grandmother's in Connecticut, and while there I attanded school and church, and my father and stepmother came to Connecticut in June after me. My sisters telegraphed to an uncle of mine, who came from Hartford and took me from my grandmother's and kept me until my father returned to Illinois. They then came for me again, took me by surprise, and took me by force and brought me back to Illinois; and, excepting that time above mentioned, the answer to that question was as I stated it.

(Objected to as not responsive.)

Cross-inter. 10. Did you not attend a school in Lee Center within the time from 1866 to 1873?
Ans. No, sir; not after October, 1866; not one day.
Cross-inter. 11. Did you not go to a school in 1867 taught by a person named Nettleton?

296 Ans. No, sir; I went perhaps a week, along in the spring of 1867, to a school taught by Mrs. Nettleton.

Cross-inter. 12. When was the conversation at Mr. Chadwick's at which Arnold was present?

Ans. I think it was in February or March of 1868.

Cross-inter. 13. What event, if any other than that transaction, enables you to fix the time?

Ans. My father had just got back from the East, and people were beginning to make arrangements to do some farming when we moved back onto the farm from Mr. Chadwick's; that is the way I fix the time of the year.

Cross-inter. 14. Have you anything aside from your memory by which you fix the year?

Ans. Nothing but events.

Cross-inter. 15. Events of which you remember the date or of which you have been informed the date?

Ans. I remember the date.

Cross-inter. —. What events?

Ans. My mother's death.

Cross-inter. 17. That was in 1866, was it not?

Ans. Yes.

Cross-inter. 18. And because you remember that she died in 1866 therefore you remember that the meeting with Arnold was in 1866, do you?

Ans. We lived one year after my mother's death in Lee Center, and I know my father went East the next winter and Mr. Arnold came up to see him a few days after he came home, and it was nearly spring when he came home.

Cross-inter. 19. Within how many days after your father's return was it that Arnold came?

Ans. Within ten days.

Cross-inter. 20. When did the conversation occur which you profess to relate in answer to the 60th direct interrogator-?

Ans. It was during the summer of 1872, I believe, that that conversation took place.

Cross-inter. 21. Where?

Ans. The conversation between Mr. Chadwick was at his house *with* my stepmother was up home.

Cross-inter. 22. Both in the same year?

297 Ans. Yes, sir.

Cross-inter. 23. Which occurred first?

Ans. That I cannot state.

Cross-inter. 24. Who was Mr. Chadwick talking with?

Ans. With my father.

Cross-inter. 25. Who began the talk?

Ans. They had been talking previous about this matter and I heard that much of the conversation.

Cross-inter. 26. Were you present during the previous talk?

Ans. Part of it.

Cross-inter. 27. Did you hear it?

Ans. I heard part of it.

Cross-inter. 28. Can you relate what you heard?

Ans. I heard Mr. Chadwick when my father asked him if he had heard from Dixon and when he thought they should have to go out to Dixon, and he asked how they had better go out. Mr. Chadwick told him that he had not heard, but expected a letter every day and they would know when to go. My father said he could get a renter on the farm to take them out. That was about all of the conversation that I noticed.

Cross-inter. 29. Who conducted the conversation with your stepmother?

Ans. My father had got mad at my stepmother and had told her that she need not think that because her father had his property in his hands that she could do as she wanted to with him for he swore and said that him and Woodbridge would take that McLean matter and take the farm out of his hands and he said he was going down to see his brothers, and this conversation was to me at that time.

Cross-inter. 30. Was your father present?

Ans. No, sir; he was in the house; this was outdoors.

Cross-inter. 31. Was any one but you and your stepmother present?

Ans. No, sir.

Cross-inter. 32. Did you ever relate any of the matters you have testified to to any person previous to your examination?

Ans. Yes, sir; portions of it.

298 Cross-inter. 33. When?

Ans. When I first came back four years ago *ago.*

Cross-inter. 34. To whom?

Ans. To my sisters and Mr. Shaw's people.

Cross-inter. 35. Did they question you about it?

Ans. Yes, sir.

Cross-inter. 36. Did you ever relate it to Martin L. Arnold?

Ans. Portions of it. Mr. Arnold came and asked me, as I had lived to home, if I had heard my parents ever speak of this matter. I told him I had, and related portions along of the substance of my testimony to-day that I have given, and then Mr. Arnold came to me and served a subpœna on me.

Cross-inter. 37. When first did you talk with Arnold about it?

Ans. I should think a year or two ago; can't say exactly.

Cross-inter. 38. Did you then tell him the substance of what you have testified to?

Ans. I told him portions of it.

Cross-inter. 39. How often in the last two years have you conversed with Arnold about it?

Ans. I have seen him several times, but he done most of the talking, as I never cared which side got beat.

Redirect examination:

Interrogatory 1. During what year was it that you were away from home, as related in your answer to the 8th cross-interrogatory?

Ans. It was during the years of 1870 & 1871—from August to the next July or August.

Inter. 2. When you moved back onto the farm, as stated in your answer to the 12th cross-interrogatory, how long had your father and family been living at Mr. Chadwick's, and in what year was it that you moved back?

Ans. I had been there myself some three months while my parents were East, and they staid there for a week or such a matter after they came back.

FLETCHER D. CLAPP.

Subscribed and sworn to before me this 18th day of April, A. D. 1883.

DWIGHT HEATON, *Examiner.*

299 WEDNESDAY, *May 16th*, 1883.

MARTIN L. ARNOLD, a witness produced on behalf of the complainants, being duly sworn according to law, in answer to questions deposed as follows:

Interrogatory 1st. What is your name, age, occupation, and place of business?

Answer. Name is M. L. Arnold; age, 56 years; farmer; and residence, Amboy, Lee county, Illinois.

Interrogatory 2nd. Do you know the parties to this suit or either and which of them, and how long have you known them respectively?

Ans. I — know- William E. Ives about twenty-five years; I have known Lot Chadwick about the same length of time; I have known Henry Clapp and Woodbridge Clapp about the same length of time; I have known Depue by sight five or six years; I am not acquainted with the heirs; I knew E. W. McLean; have never seen the heirs; have only known them by correspondence.

Inter. 3rd. When and where did you first make the acquaintance of said Edwin W. McLean?

Ans. In the summer or 1861—spring or summer—in Amboy, Illinois.

Inter. 4. Were you employed or authorized by him to act in any way for him in relation to his business with defendant Ruggles W. Clapp or the papers and securities transferred by defendant Ives to or for him? If so, state the nature and extent of such authority or employment.

Ans. I was. He got the papers from Mr. Ives and brought them to my house; asked me if I was acquainted with the parties Cannon, Craig, and Jones. I told him I was, somewhat. He showed me the notes; asked me if they were good. I told him I thought the Jones notes and the Cannon notes were worthless, but I did not know but something could be made off the Craig notes. He wished me to investigate the matter, and if I found the notes were worthless, as I supposed they were, to notify Ruggles W. Clapp and Henry Clapp, and tender the papers, securities given, that he should rely upon the mortgage for his pay.

300 (Answer objected to as not responsive and otherwise incompetent.)

Inter. 5th. Had you any authority to act for said Edwin McLean in reference to the mortgage of Ruggles W. Clapp, referred to in the bill in this cause? If so, state the nature and extent of your authority in relation thereto.

Ans. I had corresponded with him; told him I had seen Henry Clapp, but R. W. Clapp I had not seen. I told Henry Clapp he could have the papers—that we relied on the mortgage—as I had investigated them and found them to be worthless or nearly so; that Henry Clapp proposed to compromise the matter. He wrote me back to use my own judgment about compromise, as he was so far off I would know better what to do than he would. He wrote to me after I had informed him of what Mr. Clapp proposed to do. He told *Mr.* me to go and consult Goodwin & Heaton and bring suit to foreclose the mortgage.

(Answer objected to as not responsive, immaterial, and incompetent.)

Inter. 6. Examine eight notes now shown you, and state whether the same have ever been in your possession; and, if so, from and to what time and from whom you received them.

The witness was here shown the notes hereto attached and made part of this deposition, numbered as Exhibits 1, 2, 3, 4, 5, 6, 7, and 8 on the backs thereof in red ink.

Ans. I have. I have had them in possession since 1861. I received them from E. W. McLean.

Inter. 7th. Examine notes of Curtis Cannon, attached to his deposition in this cause and marked "A," "B," & "C," and state whether they were ever in your possession; and, if so, from what time and from whom you received them.

(Witness was here shown the exhibits attached to the deposition of Curtis Cannon in this cause.)

301 Ans. I have had them in my possession since they were handed me by McLean in 1861 with the other notes.

Inter 8. Examine draft of R. W. Clapp and paper thereto attached, and state whether you were ever in possession of the same; and, if so, from what time and from whom you received them.

(Witness was here shown the paper hereto attached and made a part of this deposition, marked in red ink as Exhibits 9 & 10 on the back.)

Ans. I have been in possession of them. I am not sure whether this was handed me with the other papers or afterwards. I received it from Mr. McLean. It has been in my possession since.

Inter. 9. Did you, on behalf of said Edwin McLean, at any time dispose of any of the property referred to in the original bill in this cause as having been exchanged by defendant Ives for the R. W.

Clapp notes? If so, state what property you so disposed of, in what manner, and to whom.

Ans. I did. I found that Mr. McLean had an interest in
302 some land in section 12; that the land was some that he, McLean, claimed to have got of Clapp. A man by the name of Charles Hitchcock—I think that was his name—wanted to buy it. I wrote to McLean about it. He wrote back for me not to sell it unless they ordered me to do so; that it might interfere; for me to write to R. W. Clapp and get authority from him to sell it and apply it on the mortgage. I did so. I wrote to R. W. Clapp. He writes back to sell it & apply it on the mortgage. The deed was made out to Cephas Clapp instead of Hitchcock.

Inter. 10. If you have in your possession the letter or letters of R. W. Clapp referred to in your last answer please produce the same in order that they may be made a part of your deposition.

Ans. I have.

(Witness here produced two letters, which are hereto attached and marked Exhibits 11 & 12.)

Inter 11. What consideration, if any, did you or Edwin W. McLean receive for the conveyance of the McLean property referred to in your ninth answer?

Ans. Eight hundred and fifty dollars.

Inter. 12. How were you enabled to have the title conveyed and from whom did the deed run?

Ans. I made out a deed, Edwin W. McLean to Cephas Clapp, or rather I made a bond first running from McLean to Hitchcock; then when Hitchcock made the last payment he wanted a deed to run to Cephas Clapp instead of him. I made out a deed of the premises, sent it to McLean, he executed it and sent it back to me—said deed running from McLean to Cephas Clapp. I delivered the deed to Hitchcock.

Inter. 13. How did McLean acquire the title?

Ans. I think I discovered from the papers he had an interest in that land by a deed from R. W. Clapp for a one-third interest.

Inter. 14. Did you dispose of any other property referred
303 to in my 9th interrogatory; if so, what property and to whom?

Ans. I have not disposed of any other.

Inter. 15. Have you ever had any conversation with the defendant Henry Clapp in reference to settlement or compromise of the claim of said Edwin W. McLean set up in the original bill in this cause? If so, state as nearly as you can what was said between you on the subject.

(Objected to.)

Ans. I have had conversation with him. He wanted to know how I would compromise it; if I would take land for part pay. I had a number of conversations with him. He said he had land in Whiteside county belonging to Ruggles W. Clapp, his brother, and

a hundred and sixty acres in May township. We never effected a compromise.

Inter. 16. State the different occasions on which you conversed with him on the subject and what was said between you on each occasion.

(Objected to.)

Ans. I could not tell what was said on each particular occasion. I saw him several times in Amboy and at his place on the farm and at my house in Amboy. The last time he wanted me to fetch all the papers connected with the case up to Mr. Chadwick's. I examined the titles of all the lands he wished to let me have—the land in Whiteside county. The title was all right in R. W. Clapp except a few taxes. The amount of the conversations was that he had land in Whiteside county and in May town. and he wanted we should take that. That is the amount of it.

Inter. 17. Did you take the papers to Mr. Chadwick's?

Ans. I did.

Inter. 18. Did you have any conversation with any one there on the subject; if so, with whom?

Ans. I did; with Mr. Chadwick, Henry Clapp, and Mrs. Clapp, Henry Clapp's wife.

Inter. 19. In what year did this occur?

304 Ans. In 1868, I think, in March or first of April.

Inter. 20. What was said there, if anything, in the presence of Mr. Chadwick in reference to the McLean mortgage?

(Objected to.)

Ans. I think that Mr. Chadwick said to Henry Clapp that he had better compromise it. Mr. Chadwick examined the McLean mortgage, compared it with the abstract, and told Henry he had better settle, and wished me to leave the abstract with him, that he wanted to use it in some suit; that is about all the direct conversation that I can remember. Mr. Chadwick looked the papers all through and saw these notes connected with the case. I told him they were all worthless; that we should rely on the mortgage; that it had never been released.

Inter. 21. Did you have any conversation on the subject after this in the presence of or with defendant Chadwick? If so, state when and what was said.

Ans. I never had any conversation in Henry Clapp's presence with Mr. Chadwick after that. I never had but one conversation with Chadwick but once after this and then spoke but very few words. I told him if it was not settled I should go on and close the mortgage. I don't recollect just what his reply was. I did not distinctly hear it so as to recollect.

Inter. 22. When was the last conversation you had with the defendant Henry Clapp with reference to the McLean mortgage before the commencement of this suit?

Ans. It was a short time before; I could not say just how long.

Inter. 23rd. When was it, with reference to the conversation at Mr. Chadwick's referred to in your twentieth answer?

Ans. It was about four days before I went to Mr. Chadwick's; in 1868.

Inter. 24. What was said between you on the subject at that time?

305 Ans. He said he had been to Washington and got a deed from R. W. Clapp. He wanted I should bring the papers up to Chadwick's and have him look them over. He wanted I should come right up there the next day. I told him I could not. He then set another day and I told him my family was sick, but that if I could get away I would go up that day, and I did go up that day.

Inter. 25. After seeing him at Mr. Chadwick's did you again talk with him on the subject?

Ans. I did.

Inter. 26. How long after and what was said between you on the subject?

Ans. I could not say how long after, but I told him there was a defect in the title to the May town. property. R. W. Clapp had a bond for a deed that had never been perfected. He said if I would wait until his brother, R. W. Clapp, come up he could find the papers which would make it all right. He said there was a great many papers of R. W. Clapp's in a box at his house which Perry Clapp's clerk left with R. M. Brigham; that he had seen Brigham and had the box brought to Amboy and he had had it taken to his house; that he wished me — see the papers which he had in the box in reference to the land in May town. which he wanted to let me have. I did go there to his house and looked through the papers, but did not find the papers to make the title right. He said if I would wait until R. W. Clapp came up—his brother—he would know where the papers were and would make the title all right. I did so wait until his brother came up. I went to Lee Center; took Egbert Shaw and Ruggles W. Clapp; with them went to the farm. I got out of the buggy and left them in the buggy. I went to the door. Mrs. Clapp came to the door. I asked her if Mr. Clapp was at home. She said he was not. I asked her when he would be home and where had gone. She said she did not know. I told her that Mr. Ruggles W. Clapp was out in the buggy; that I had come up to see if he could not fix up that matter of the title to the

306 lands and fix that matter up. She did not open the door wide open, and only a space of about four inches. I went back to the buggy, told Ruggles W. Clapp that Mrs. Clapp said his brother was not at home; that she would only just open the door so she could peak out. He got out of the buggy, said his brother was in the house, and he was going to see him. He did go in the house. Mr. Shaw & I waited, I should say, about ten minutes, & he came out; said his brother was in the house; that he should not go back with us; that he was going to stay with his brother awhile; that they could not keep him out of the house. I went right immediately to Chicago as soon as I could get to Amboy; took the cars to Chicago and got out the papers for this suit. The marshal

came out with me. I took him up to the premises—the farm there—and he served the papers. I have had a talk with Henry Clapp several times since then. At one time in Amboy I was sitting on a box opposite the passenger-house along with Charles Gaylord, harness-maker. Mr. Henry Clapp came up to us. Says, Arnold, If you close the mortgage on that farm and beat me out of it I will be the death of you. Henry Clapp was somewhat intoxicated or had been drinking considerable at the time. After that, had a conversation with him at a saloon down in the basement opposite the passenger-house. He sent for me. We went into a room at the rear end of the saloon and talked the matter over. He wanted to know what was the very least that I would take and compromise the matter. He said he had been to Dixon, but he had got away from them and had come down there and wanted to see me. I had another talk with him at his stable up to the farm. I think this was after he had deeded it to Mr. Chadwick. I am not positive, but think it was after he said he was forced into the hands of Mr. Chadwick by his brother, Lee Clapp; that he had a judgment against him, and
307 that Chadwick had let him have the money to settle it, or that Chadwick had paid it or settled it. I asked him how much he owed Mr. Chadwick or how much Chadwick had let him have. I took a pencil and paper; he told me the amounts of Lee Clapp's judgment, cemet-ry lots, store bill, and other matters, amounting to between ten and eleven hundred dollars, figured up. I asked him if that was all he owed him. He said it was, and he said he wished he knew where he could get the money and get out of his clutches. This conversation was at his barn, on the farm in Bradford. I told him to go down to Cephas Clapp; that if he had not got the money by him that he could get it for him and help him out of the scrape. He said he would do so. I left him then and came home. Mr. Cephas Clapp said he came down there and said the same thing to him. I did not hear him.

(Answer objected to as not responsive to the question and otherwise incompetent and immaterial.)

Inter. 27. Do you remember a conversation with defendant Henry Clapp in a saloon opposite the passenger-house in Amboy? If so, relate the same, and please confine your answer to that occasion.

Ans. I believe I have stated a boy came for me and said Mr. Clapp wanted to see me. I went down into the saloon; saw Mr. Clapp; we went into a room at the rear end of the saloon. Clapp said he had got away from them. He had been to Dixon and wanted to see me. I said before he wanted to know what was the least I would take to compromise the matter. I told him I wanted a hundred cents on the dollar. Then he said, But you offered to take less once. I told him that was before I had been to the trouble and expense of commencing suit. I says, I heard you had been shot in the foot. How did that happen? He says, It is none of your d—n business. He said he did not allow anybody to interfere with his
308 private family matters. He then asked me how much I got out of this matter in case I should win it—the foreclosure. I

told him it was none of his business. He then rapped on the table and wanted the boy to bring in some liquor and I got up and left.

(Objected to as not responsive and otherwise incompetent.)

Inter. 28. Do you remember having a conversation with defendant Henry Clapp at the stable on the farm in controversy in this case in reference to the McLean mortgage? If so, relate the same, so far as it was on that subject, and please confine your answer to that occasion only.

Ans. I had been looking at the papers contained in the box there in the house on the farm. I did not find the papers that were missing. He got up and went out to the barn or stable. I got up and went out there, too, with him. He said he thought his brother, Woodridge, could fix up the title so that it would be all right to the land in May town. He said he would like to have the matter settled up. The balance of the conversation I have stated in answer to a previous interrogatory.

(Objected to as not responsive and otherwise incompetent.)

Inter. 29. Were you and Henry Clapp together examining the papers in the box; if so, for what purpose?

Ans. He wanted me to come to his house and see the papers in the box. I did so. They brought out the box and I looked through the papers. I don't think he took the papers out. He was in the room. It was for the purpose of compromising this McLean matter.

Inter. 30. State in what year the first effort, in your knowledge, was made to compromise with any of the defendants the matter of the McLean mortgage.

(Objected to.)

Ans. In 1861.

Inter. 31. What effort was then made and with whom?

(Objected to.)

Ans. With Henry Clapp. He wanted to let me have some lands, as I have already stated, in part pay.

309 Examination adjourned until 9 o'clock a. m., Thursday, May 17th.

THURSDAY, *May 17th*, 1883—9 a. m.

Examination of MARTIN L. ARNOLD resumed.

Cross-examination:

Cross-interrogatory 1. Have you a pecuniary interest in the result of this case?

Ans. I have.

Cross-inter. 2. What is that interest?

Ans. The amount of one-half.

Cross-inter. 3rd. One-half of what?

Ans. The amount of what is made off from it.

Cross-inter. 4. When did you acquire that interest?

Ans. Some time about 1864 or 1865. I would not be positive.

Cross-inter. 5. Then it was some years before the suit was commenced, was it?

Ans. Yes, sir.

Cross-inter. 6. Have you the deed made by R. W. Clapp to McLean?

Ans. What deed have you reference to? I think there are several deeds amongst the papers.

Cross-inter. 7. I refer to the deed or deeds made by R. W. Clapp to Edwin W. McLean at about the time the notes were surrendered to R. W. Clapp.

Ans. I have some deeds from R. W. Clapp to McLean.

Cross-inter. 8. I wish to see the deeds you refer to. Will you produce them?

Ans. There is a deed from R. W. McLean to some land in section 12 I don't see among the papers.

(The witness here produced two papers, one purporting to be a deed from Ruggles W. Clapp and wife to E. W. McLean and one from Ruggles W. Clapp & wife to Edwin W. McLean, each of said deeds bearing date tenth day of December, 1857. A copy of each of said deeds is hereto attached and marked Exhibits 13 & 14 and made a part of this deposition, by agreement of counsel, to be used in lieu of the originals should they not be produced on the
310 trial of this cause.)

Cross-inter. 9. Have you a deed made by William E. Ives to Edwin W. McLean? If so, please produce it or permit a copy to be annexed to your deposition.

Ans. I have.

(The witness here produced a paper purporting to be a deed from William E. Ives & wife to Edwin W. McLean, dated June 4th, 1860, a copy of which deed is hereto annexed, marked Exhibit 15, and made a part of this deposition, which may be used in lieu of the original, if not produced on the trial of this cause, by agreement of the solicitors in this case.)

Cross-inter. 10. From whom and when did you receive these deeds?

Ans. From McLean. Most of the papers were received when he was here in 1861. From E. W. McLean.

Cross-inter. 11. Did you receive the deeds then?

Ans. I am not positive whether I did or not. He sent me some papers afterwards.

Cross-inter. 12. Have you a deed made by Edwin W. McLean to yourself?

Ans. I have.

Cross-inter. 13. Will you please produce it and allow it or a copy to be annexed to your deposition?

Ans. I will.

(Witness here produced a paper purporting to be a deed from

Edwin W. McLean and wife to Martin L. Arnold, dated the 11th day of November, 1867, a copy of which said deed is hereto attached, marked Exhibit 16, and made a part of this deposition, and, by agreement of solicitors, to be used on the trial of this cause in case the original thereof is not produced.)

Cross-inter. 14. When did you receive from McLean this deed you have last produced?

Ans. In 1867.

Cross-inter. 15. At the time McLean delivered you the papers, in 1861, was there a building on the lot described in the deed to William E. Ives and wife to McLean which you have produced?

311 (Objected to as not proper cross-examination.)

Ans. There was.

Cross-inter. 16. A building of what description?

(Objected to as not proper cross-examination.)

Ans. An old wooden building.

Cross-inter. 17. Was it occupied then; if so, by whom and for what purpose?

(Objected to as last question.)

Ans. It was occupied as a meat market by Keefer & Livy. A man by name of Skinner kept his paint dishes upstairs for awhile. There were some other persons occupied the upper part for awhile. I don't recollect the name.

Cross-inter. 18. Until what time did Keefer and Livy continue to occupy that building?

(Objected to as not cross-examination.)

Ans. Mr. Keefer occupied the building or part of the building at the time it was burned.

Cross-inter. 19. When was that?

Ans. I do not recollect the date.

Cross-inter. 20. Don't you remember the year?

Ans. I don't remember the year.

Cross-inter. 21. To whom, if you know, did the occupants of that building after you received the papers from McLean until it was burned pay rent, if they paid any to any one?

Ans. To me.

Cross-int'r. 22. For whose benefit or account did you receive it?

Ans. I was acting for McLean; received it for him.

Cross-inter. 23. Did you at any time after 1861 pay taxes for McLean on any of the property conveyed to McLean by the several deeds that have been r-ferred to here?

Ans. I did.

Cross-inter. 24. Did you at any time after 1861 occupy or receive rent for any of the lands conveyed to McLean by R. W.

312 Clapp by the deeds that have been referred to here?

Ans. I did.

Cross-inter. 25. Which lands?

Ans. The forty in Lee Center township and some in section 12.

Cross-inter. 26. Lee Center is town. twenty, range 11, is it not?

Ans. It is.

Cross-inter. 27. For what years did you receive rent for that in town. 20, range 11?

Ans. 1881 & 1882.

Cross-inter. 28. For what years did you receive rent for that in section 12, town. 20, range 10?

Ans. 1861.

Cross-inter. 29. Did not you receive rent for it after 1861?

Ans. I don't think I did receive any after that?

Cross-inter. 30. Who, if any one, occupied it after 1861?

Ans. It was not occupied—that is, cultivated—until it was sold to Hitchcock. I don't recollect receiving a penny for it after Craig left it.

Cross-inter. 31. Have you the bond for a deed given by McLean to Hitchcock?

Ans. No, sir.

Cross-inter. 32. Did you ever have it?

Ans. I think I did.

Cross-inter. 33. When last?

Ans. I think when I delivered him the deed he delivered me the bond from McLean, and I sent it to McLean.

Cross-inter. 34. Do you know where it now is?

Ans. I do not.

Cross-inter. 35. Did you not receive rent for the land in town. 20, range 11, prior to 1881?

Ans. I think I did a little.

Cross-inter. 36. Who, if any one, was in possession of that land in 1861?

Ans. I was.

Cross-inter. 37. How long did you continue in possession of it?

Ans. Until the present time.

Cross-inter. 38. Have you cultivated it?

Ans. No, sir.

Cross-inter. 39. How, if at all, did you occupy it?

313 Ans. I looked after it, and paid taxes; saw the underbrush was not cut off from it.

Cross-inter. 40. Is it timber land?

Ans. It was once timber land, but the timber had all been cut off at that time.

Cross-inter. 41. Was it used for pasture?

Ans. It was two years, and cattle run at large on it, more or less.

Cross-inter. 42. Did not Curtis Cannon live on some of the property conveyed by R. W. Clapp to McLean?

Ans. He did not, to my knowledge.

Cross-inter. 43. With whom did you make the arrangement by which you acquired your interest in this suit?

Ans. With E. W. McLean.

Cross-inter. 44. Is it a written or verbal contract?

Ans. Written letters.

Cross-inter. 45. Have you the letters?

Ans. I have not got them now.

Cross-inter. 46. Where are they?

Ans. The last I saw of them they were in the hands of my attorneys, Messrs Goodwin & Williams.

Cross-inter. 47. Both Goodwin & William are now dead, are they not?

Ans. They are.

Cross-inter. 48. Were you a witness on the trial of a case wherein Lot Ch-dwick was complainant and Edwin Clapp and others were defendants, heard before the Lee county circuit court at the October term, 1872?

Ans. I was; but I don't recollect whether it was Edwin Clapp or Ebenezer Clapp.

Cross-inter. 49. Were you again examined as a witness in that same case and your deposition taken before Alfred Tooker, at Amboy, on or about December 22, 1876?

Ans. I think I was.

Cross-inter. 50. When giving your testimony on either of those occasions were you asked concerning the conversation at Lot Chadwick's house which you have related on your direct examination here?

Ans. I don't recollect whether I was or not.

314 Cross-inter. 51. Did you not testify in that case, when you were examined in court, that Henry Clapp said "he would want me with that paper," referring to the abstract of title which you say you had there in some suit that was pending; don't know what suit it was?

Ans. My impression is that it was Mr. Chadwick instead of Henry Clapp, though it might have been Henry Clapp; they were both together.

Cross-inter. 52. Did you not there testify that Henry Clapp and wife wanted to know if they could keep the paper they spoke about, using it in some suit, or words to that effect, the paper referred to being an abstract of the title to the lands described in the McLean mortgage?

Ans. My impression is it was Chadwick said it. It might have been Clapp and his wife; they were all together there.

Cross-inter. 53. I will once more ask you whether you testified on the trial to which I have referred to the matters embraced in the 51 & 2nd cross-interrogatory.

Ans. I don't recollect any different than what I have stated.

Cross-inter. 54. Please tell me whether on that trial you swore to what I have asked you in the 51 & 52 cross-interrogatorys?

Ans. I do not know whether I swore that it was Clapp or Chadwick that wanted that paper in the suit; I don't recollect which.

Cross-inter. 55. And you don't remember now which it was said it, do you?

Ans. I am not positive, but my impression is Chadwick said it, to the best of my recollection.

Cross-inter. 56. Did you while testifying on your examination be-

fore Alfred Tooker as a witness in that case say that this interview at Mr. Chadwick's house was in February or March, 1868, or words to that effect?

Ans. I presume I did. I believe that is the time that I went there; it possibly might have been as late as April.

315 Cross-inter. 57. How long after that occasion was it that you met and spoke with Lot Chadwick on the street in Lee Center?

Ans. Not very long; a short time. I could not just say the number of days.

Cross-inter. 58. Were you not in giving your deposition in that case asked, "Where were those two conversations—both in the same year?" and did you not answer, "I don't recollect"?

Ans. I don't recollect particularly about that question being asked or what I answered at that time, but my recollection now is that it was but a short time after I was at Chadwick's house.

(All of answer after the word "but" objected to as not responsive.)

Cross-inter. 59. Were you asked and did you answer in substance as I have stated in the 58th cross-interrogatory?

Ans. I don't recollect now.

Cross-inter. 60. Did you not in your examination before Alfred Tooker profess to tell what Lot Chadwick said to you on the street in Lee Center when you spoke to him as you related on your direct examination here?

(Objected to as calling for what the witness professed to do and not what he did.)

Ans. I do not recollect.

Cross-inter. 61. Did you not say yesterday on your direct examination that you did not understand distinctly what Chadwick said on that occasion?

Ans. I think I did; did not understand all he said.

Cross-inter. 62. Did you not say on your examination before Alfred Tooker that on that occasion Chadwick said, "They had got the notes up and he did not think they could make the mortgage stick"?

Ans. I do not recollect whether I so stated or not.

Cross-inter. 63. How long between that interview at Chadwick's house and the conversation you had with Henry Clapp at the

316 barn or stable which you related yesterday?

Ans. I do not recollect.

Cross-inter. 64. Which occurred first?

Ans. Chadwick's house, I think.

Cross-inter. 65. Have you any doubt about it?

Ans. My impression is it was Chadwick's house first before that time specified, but I talked with Clapp at his house before this several times.

Cross-inter. 66. I ask you if you remember certainly which occurred first, the interview at Chadwick's house or the talk with Henry Clapp at the stable?

Ans. I think the interview at Chadwick's house was before the talk at Clapp's stable when he told me what he owed Chadwick or what Chadwick had let him have.

(Answer objected to as not responsive.)

Cross-inter. 67. You do not answer my question. The examiner will please repeat it to you & you please answer it directly.

Ans. It is now my impression that that was first at Chadwick's house; in fact, I know it was first so far as the talk with Henry Clapp at his stable in relation to what he owed Chadwick.

Cross-inter. 68. On your said examination before Alfred Tooker in 1876 were you asked whether you had any interest in this McLean suit, and did you answer, "I have," and were you then asked to what extent, and did you answer, "I could not tell," and were you then asked why can't you tell, and did you answer because "I don't know?"

Ans. I have no recollection now of the questions being asked.

Cross-inter. 69. Did you or not on that occasion give the answers I have embodied in the 68 interrogatory?

Ans. I don't recollect.

Cross-inter. 70. You knew then as well as you know now the extent of your interest in this suit, did you not?

Ans. I did.

Cross-inter. —. When asked it then why did you not tell it as you tell it now?

317 Objected to as assuming that the witness testified differently on the occasion referred to than in his present testimony and as not proper cross-examination.

Ans. I don't know but I did tell it then as I tell it now. I had forgotten entirely of my being examined before Tooker until my attention was called to it here, and suppose that the examination here in Dixon before the circuit court was all that I had been examined in the case, but after having my attention called to the matter I do recollect of being examined before Tooker, but particularly what questions were put and answered I do not know or recollect.

Cross-inter. 72. During your direct examination here on yesterday did you say when you produced the two letters purporting to have been written by R. W. Clapp to you that you had other letters from him at home?

Ans. I think I did.

Cross-inter. 73. Did you also say that you had a letter or letters at home from McLean to you upon the same subject?

Ans. I don't say that I had them at home, but I had them and gave them to my attorneys, Messrs. Goodwin & William, and never got them back.

Cross-inter. 74. Have you now any other letter or letters from R. W. Clapp to you on the same subject as the two you produced yesterday?

Ans. I have another one on the subject of the McLean matter.

Cross-inter. 75. What is the date of it?

Ans. March 3rd, 1873.

Cross-inter. 76. Is that one all the letters you now have which were written to you by R. W. Clapp relative to the McLean matter?

Ans. I think I have more. I looked through my papers last night; found this one. I know I have had more letters from him pertaining to the McLean matter, but I cannot say now where they are.

Cross-inter. 77. During what year did you receive the other letters you refer to?

Ans. I could not tell without seeing their dates.

318 Cross-inter. 78. About how many did you receive from him in all?

Ans. Four or five, I should think.

Cross-inter. 79. Did you receive the others before or after you received the two that have been annexed to your deposition here?

Ans. I think I received one before that.

Cross-inter. 80. About how long before?

Ans. I could not certainly say; perhaps a year or thereabouts. I could not tell certainly without seeing the letter.

Cross-inter. 81. Will you allow me to read the letter which you have in your pocket and to which you referred in your former answer as being from R. W. Clapp and dated March 3rd, 1873?

Ans. If my attorney says it is proper for me to let you read it I will let you take it and read it.

Cross-inter. 82. Will you inquire of your attorney and in answer to this question state whether you will allow me to read it?

(Counsel for complainants objects to the reading of the letter unless it be first offered or called for as a part of the evidence of the witness.)

Ans. I will allow him to read it if my counsel says it is proper for him to read it.

Cross-inter. 83. By your counsel you mean Mr. Bardwell, who is present here conducting this examination, or, perhaps, on behalf of the complainants, do you not?

Ans. I do.

Cross-inter. 84. On yesterday when you said you had at home other letters from R. W. Clapp to you did Mr. Bardwell direct you to go home last evening and bring them here to-day?

Ans. He told me last evening to go home and get the let-

319 ters and papers of R. W. Clapp & McLean at home in this matter and bring them up to-day.

Cross-inter. 85. How long after your interview with Henry Clapp at the stable or barn that you and Egbert Shaw and R. W. Clapp went there, as you said on your direct examination?

Ans. I could not tell exactly. It was a while after; it was the first time I saw Mr. R. W. Clapp after I had that conversation.

Cross-inter. 86. Tell me, to your best recollection, what length of time elapsed between the two events.

Ans. It might have been a year after and it might not have been

so long. It was the first time I saw Ruggles W. Clapp. It was a day or two before this suit was commenced.

Cross-inter. 87. Is it your recollection that it was not more than a year between the two events?

Ans. I could not say positively. After I had this talk at the stable I did not go there again before this time spoken of with Clapp and Shaw. Then I went to Chicago, got out the papers, and commenced this suit.

(Answer objected to as not responsive.)

Cross-inter. 88. When I asked you in the 86 question to tell your best recollection of the length of time that elapsed between the two events you answered, "It might have been a year after or not quite so long." I now ask you whether you mean by that answer that it is your recollection that it was about a year. Please answer this question directly.

Ans. I think it was something near a year, but I am not positive.

Cross-inter. 89. How near a year do you think it was?

Ans. I have answered the question once that I do not recollect, and I cannot give any nearer answer than that. I have fixed the time that I was there with Clapp and Shaw a day or so before this suit was commenced.

320 Cross-inter. 90. I have not asked you when you were there with Clapp and Shaw; my inquiry is simply how near a year you think it was between the time when you talked with Henry Clapp at the stable and the time when you went there with Clapp and Shaw; please tell me that.

Ans. I don't know how to answer the question any different than I have answered. I have said I did not recollect. I could not tell without a reference.

Cross-inter. 91. Why, then, do you say it was something near a year, if, as you now say, you do not recollect the time?

Ans. I now think it might be about a year, but I am not positive. I could not be without a reference.

Cross-inter. 92. Any one who did not pretend to know personally anything about it could say as well as you do "it might have been a year," for it might have been that or it might not have been a day. What I desire to learn of you is whether I am to understand by that expression you use, "it might have been a year," it is your best recollection that it was a year?

Ans. My best recollection is that some little time elapsed between that time and the time R. W. Clapp came to Lee Center. He did not stay but a few days. I received a letter from, I think, Henry saying he had gone to Washington and would be back in about six weeks and would see me; this was in reference to perfecting the title to the lands they wished to let me have in May town. in settlement of this McLean claim. I think it was six months before he came back again. It might have been more. Then I went there with him.

(Objected to as not responsive.)

Cross-inter. 75. What is the date of it?

Ans. March 3rd, 1873.

Cross-inter. 76. Is that one all the letters you now have which were written to you by R. W. Clapp relative to the McLean matter?

Ans. I think I have more. I looked through my papers last night; found this one. I know I have had more letters from him pertaining to the McLean matter, but I cannot say now where they are.

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Ans. I could not certainly say; perhaps a year or thereabouts. I could not tell certainly without seeing the letter.

Cross-inter. 81. Will you allow me to read the letter which you have in your pocket and to which you referred in your former answer as being from R. W. Clapp and dated March 3rd, 1873?

Ans. If my attorney says it is proper for me to let you read it I will let you take it and read it.

Cross-inter. 82. Will you inquire of your attorney and in answer to this question state whether you will allow me to read it?

(Counsel for complainants objects to the reading of the letter unless it be first offered or called for as a part of the evidence of the witness.)

Ans. I will allow him to read it if my counsel says it is proper for him to read it.

Cross-inter. 83. By your counsel you mean Mr. Bardwell, who is present here conducting this examination, or, perhaps, on behalf of the complainants, do you not?

Ans. I do.

Cross-inter. 84. On yesterday when you said you had at home other letters from R. W. Clapp to you did Mr. Bardwell direct you to go home last evening and bring them here to-day?

Ans. He told me last evening to go home and get the let-

319 ters and papers of R. W. Clapp & McLean at home in this matter and bring them up to-day.

Cross-inter. 85. How long after your interview with Henry Clapp at the stable or barn that you and Egbert Shaw and R. W. Clapp went there, as you said on your direct examination?

Ans. I could not tell exactly. It was a while after; it was the first time I saw Mr. R. W. Clapp after I had that conversation.

Cross-inter. 86. Tell me, to your best recollection, what length of time elapsed between the two events.

Ans. It might have been a year after and it might not have been

so long. It was the first time I saw Ruggles W. Clapp. It was a day or two before this suit was commenced.

Cross-inter. 87. Is it your recollection that it was not more than a year between the two events?

Ans. I could not say positively. After I had this talk at the stable I did not go there again before this time spoken of with Clapp and Shaw. Then I went to Chicago, got out the papers, and commenced this suit.

(Answer objected to as not responsive.)

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Ans. I think it was something near a year, but I am not positive.

Cross-inter. 89. How near a year do you think it was?

Ans. I have answered the question once that I do not recollect, and I cannot give any nearer answer than that. I have fixed the time that I was there with Clapp and Shaw a day or so before this suit was commenced.

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Cross-inter. 91. Why, then, do you say it was something near a year, if, as you now say, you do not recollect the time?

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Cross-inter. 92. Any one who did not pretend to know personally anything about it could say as well as you do "it might have been a year," for it might have been that or it might not have been a day. What I desire to learn of you is whether I am to understand by that expression you use, "it might have been a year," it is your best recollection that it was a year?

Ans. My best recollection is that some little time elapsed between that time and the time R. W. Clapp came to Lee Center. He did not stay but a few days. I received a letter from, I think, Henry saying he had gone to Washington and would be back in about six weeks and would see me; this was in reference to perfecting the title to the lands they wished to let me have in May town. in settlement of this McLean claim. I think it was six months before he came back again. It might have been more. Then I went there with him.

(Objected to as not responsive.)

Cross-inter. 93. Please repeat the question to the witness, who will confine himself to an answer of the question asked.

Ans. I will have to answer it: I don't know.

Cross-inter. 94. Why, then, do you say "it might have been a year"?

321 Ans. Because I knew some time elapsed before he came to Lee Center the first time after and a longer time the second time before I saw him.

Cross-inter. 95. Have you in your possession any envelop in which any letter ever came to you from R. W. Clapp?

Ans. I have.

Cross-inter. 96. Will you please allow me to see it?

Ans. I do so.

(Witness here presented to def't's counsel 3 envelops.)

Cross-inter. 97. In what year did you receive this envelop which is postmarked Lee Center, January 13?

Ans. I think in 1873.

Cross-inter. 98. In what year did you receive the two which are postmarked at San Francisco, California?

Ans. I think it was the same year.

Cross-inter. 99. Are these three all the envelops you have in which you received letters from R. W. Clapp?

Ans. I do not know as therde is any more.

Cross-inter. 100. Were the two letters that have been here marked Exhibits 11 & 12 enclosed in envelops when you received them?

Ans. They were.

Cross-inter. 101. Where are the envelops?

Ans. I don't know; they may be worn out.

Cross-inter. 102. Have you the letters which came to you from R. W. Clapp in the three envelops which you have handed me?

Ans. I found one of them last night; one of them is amongst the papers there, and the other one I think, is amongst the papers somewheres.

Cross-inter. 103. Why have you preserved these envelops and not those in which you say you received Exhibits 11 & 12?

Ans. Probably because they were put away without the envelops; as a general thing, I don't preserve any envelops unless they happen to get laid away with the letters.

Redirect examination:

Interrogatory 1. Referring to the deed from E. W. McLean
322 and wife to you, marked Exhibit 16, state upon what terms the same was delivered to you and for what purpose, if any.

(Objected to because the witness has already stated that such conveyance was accompanied by letter, which is the best evidence.)

Ans. It was delivered to me on these terms: I was to keep it in my hands unincumbered in a shape to tender it back to R. W. Clapp or defendants in case we won the suit; if we failed in the suit it was to be mine absolutely to help to pay expenses of suit.

Inter. 2. Do you still hold said deed and the title thereby conveyed on those terms?

(Objected to as leading.)

Ans. I do.

Cross-Inter. 3. Can you state the amount of rent received by you from the property in Amboy described in the deed from Ives to McLean and known as the Market lot? If you can, please do so.

Ans. I could not tell the exact amount received.

Inter. 4. Tell as near as you can.

Ans. Well, I think I received between fifty and seventy-five dollars.

Inter. 5. Was it more than that?

Ans. It might have been; I think not.

Inter. 6. State the largest amount it might have been.

Ans. It could not have exceeded a hundred dollars. I don't think it did seventy-five.

Inter. 7. Did you pay out any money for repairs, taxes, or other purposes connected with this property? If so, state the amount so paid out.

Ans. I paid David Welty forty dollars interest; I paid—I don't recollect how much the taxes were; there was some back taxes on it, repairing sidewalk, repairing roof, spouting eave trough, repairing stairs, and taxes as much or more than I received for rent.

Inter. 8. State, as nearly as you can, on what tracts received in exchange for the notes of R. W. Clapp to McLean you paid taxes in addition to the Market lot.

323 Ans. I paid taxes on S. W. ¼ of section 12, and S. E. ¼ section 30, town. 20, R. 11; also on E. ½ N. E. ¼ of S. W. ¼ sec. 36, 20, 10. Section 12 is in town. 20, range 10.

Inter. 9. How much did you pay on section 12 and for what years?

Ans. The first year when it came into my hands I find, to redeem farm, $35.88; in April, 1864, to redeem section 12 from tax of 1851, I paid $39.87. I have not the receipts here and don't recollect the amount. I kept the taxes up until I sold it to Hitchcock.

Inter. 10. How much did you pay for taxes on the land in section 30, town. 20, range 11, and for what years?

Ans. I paid Geo. H. Ambrose $16.00 to redeem it. I have paid the taxes from that time to the present time, from four to six dollars a year.

Inter. 11. In what year did you make the payment to Ambrose?

Ans. I could not tell certain without a reference; I think in 1861 or '2.

Inter. 12. How much did you pay for taxes on land in sec. 36, town. 20, range 10, and for what years?

Ans. I find the first tax was $1.90, and it has been about that or two dollars ever since. The first tax was about 1861 or '2.

Inter. 13. What was the amount of rent received by you from the 40-acres tract in town. 20, range 11?

Ans. I received of Gray $30.00 and, I think, of Eddy four or five dollars. That is all.

Inter. 14. How much rent did you receive from the tract in section 12, town. 20, range 10?

Ans. Twenty-six dollars and fifty cents.

Inter. 15. Did you pay out for taxes and repairs or other expenses relating to the lands exchanged for the R. W. Clapp notes any further sums than you have already specified? If so, state the amounts and for what purpose.

Ans. I paid out more on section twelve than I stated, I find by looking; I cannot specify the amount.

Recross-examination:

Cross-inter. 1st. You don't mean to say that you continued
324 to pay taxes on the land in section 12 after Hitchcock was given a bond for a deed, do you?

Ans. I did not pay any taxes on that land after that.

Cross-inter. 2. Did not you become the purchaser of that land in section 12 at a tax sale in 1865?

(Objected to as not proper recross-examination.)

Ans. I did.

Cross-inter. 3. Did you keep a complete account of the receipts and expenditures by you in reference to this property conveyed by R. W. Clapp and Ives to McLean?

Ans. I tried to keep a correct account of all I received and all I expended.

Cross-inter. 4. Did you keep it in a form or manner that will enable you now to give it in detail?

Ans. I don't know that I could without reference to letters. I kept McLean informed by letter of all I received and all I paid out as I went along.

Cross-inter. 5. Have you any evidence, other than your own statement, concerning the terms upon which you say the deed of McLean to you was delivered to you?

Ans. I have none; only the letters I received. I stated before I gave them to Goodwin & William.

Cross-inter. —. Have you any letters from McLean upon that subject?

Ans. I think I have.

Cross-inter. 7. Letters from him concerning the terms upon which that deed was delivered to you, do you mean?

Ans. I think I have letters from him speaking of that.

Cross-inter. 8. If you have in your possession any letters from McLean concerning that deed, will you please produce them and let them be annexed to your deposition?

Ans. I don't know that I have any letters directly pertaining to that.

Cross-inter. 9. If you have any will you produce them?

Ans. I will if I can find any. I will look them all through.

Cross-inter. 10. Well, why don't you do it?

325 Ans. I don't think I have any letters of direct reference to that except two letters I gave my attorneys.

Cross-inter. 11. Do the letters which you have here now relate or refer to that?

Ans. I don't know that any of them do refer to that particular transaction. I have another pile at home.

Cross-inter. 12. Why don't you look at the letters you have here now and tell us whether any of them refer to this deed?

Ans. I have looked through them and will do so again.

Cross-inter. 13. Until since giving your last answer you had not looked at them since I began questioning you on this subject, had you?

Ans. No.

Cross-inter. 14. Please tell me the dates of the letters from McLean to you which you have here now.

Ans. October 3d, 1861, April 2d, 1868, January 3d, 1867, December 21st, 1861, July 8th, 1861, April 16th, 1862, March 29th, 1866, May 19th, 1865, April 16th, 1866, April 1st, 1865, Feb'y 24th, 1865, May 24th, 1864, June 10th, 1863, August 13th, 1864, May 26th, 1865, May 21st, 1862, March 20th, 1862, July 6th, 1864, April 25th, 1868, July 17th, 1861, January 9th, 1862, Nov. 29, 1867, October 28, 1865, April 20, 1867, March 21st, 1868, Dec. 28, 1861, April 25, 1868, March 31, 1873. That is all here. I have some more at home.

Cross-inter. 15. Will you please produce, that I may read, the letter of McLean to you dated November 29, 1867?

Ans. I will if my solicitor, Mr. Bardwell, who is now conducting this suit, advises me to do so.

Cross-inter. 16. Will you allow that letter to be attached to your deposition as an exhibit?

Ans. If my attorney says that it is proper for me so to do.

(Solicitor for complainants requests a moment's time to read
326 the letter and other letters referred to.)

(Solicitor for complainant having examined the letter, the same is produced.)

Witness further answers: I produce the letter here, to be attached.

The letter is hereto attached, marked Exhibit 17.

Cross-inter. 17. Is not this letter the one which accompanied the deed made by McLean to you?

Ans. I received it about the time I did the deed.

Cross-inter. 18. The deed purports to have been acknowledged on November 29th, 1867. This letter is dated the same day, and in it says I have executed the deed and enclose it to you. Do you not now think it is the same letter that accompanied the deed made by McLean to you?

Ans. I said so in my other answer, that I received it about the time or at the time.

Cross-inter. 19. Then it is not true that you gave the letter to Goodwin and William and never got it back, is it?

(Objected to as misconstruing the testimony of the witness.)

Ans. It is true that I gave two letters that I never got back. I never gave them that letter. I *should* them that letter.

Cross-inter. 20. Will you please produce a letter from Edwin McLean to you, dated April 25th, 1868, and let it be attached to your deposition as an exhibit?

Ans. There it is.

Witness here produced a letter dated April 17th, 1868, which is hereto attached and marked Exhibit 18.

Cross-inter. 21. Have you not another one of April 25th, 1868?

Ans. I have.

Cross-inter. 22. Please produce that one and let it be attached as an exhibit to your deposition.

Witness here produced another letter dated April 25th, 1868, which is hereto attached and marked Exhibit 19.

Examination adjourned until 9 a. m., May 18th, 1883.

327 FRIDAY, *May* 18—9 a. m., 1883.

Examination of MARTIN L. ARNOLD resumed.

Second redirect examination:

Interrogatory 1st. Please produce, to be attached as exhibits to your deposition, two letters of E. W. McLean, referred to by you yesterday, dated October 17th, 1867, and November 18th, 1867.

(Objected to as not proper redirect examination and otherwise incompetent.)

Inter. 2d. If you have any letters from E. W. McLean on the subject referred to in his letter of November 29th, 1867, marked Exhibit 17, please produce the same, to be attached as exhibits hereto.

Ans. Witness here produced two letters purporting to be from E. W. McLean, addressed to witness, and dated, respectively, November 18th, 1867, and October 17th, 1867, and which are hereto attached and marked Exhibits 20 and 21.

Interrogatory 3rd. After the receipt of the letter of November 29th, 1867, did you have any farther correspondence with McLean in reference to the land deeded to you by him by the deed therein inclosed?

Ans. I did.

Inter. 4. Have you in your possession the further letters from him on that subject?

Ans. I believe there is one letter that refers to it; the other two I have not.

Inter 5. Produce the one letter you refer to, to be attached as an exhibit to your deposition.

Ans. Witness here produced a letter purporting to be from E. W.

McLean to witness, dated April 2d, 1868, which is hereto attached and marked Exhibit 22.

Inter. 6th. Where are the other two letters you refer to on the subject?

Ans. I let Mr. Goodwin and William have them, my attorneys.

Inter. 7. Are these the two letters you have already referred
328 to as having been left by you with Goodwin and Williams?

(Objected to as leading & not proper redirect examination.)

Ans. They are.

Inter. 8. After November 29th, 1867, did you write to E. W. McLean in reference to the land described in said deed; and, if so, did you receive replies thereto?

Ans. I don't know that I wrote to him directly about that deed—the land referred to.

Inter. 9. If you can do so, please state the substance of the two letters you left with Goodwin and Williams.

(Objected to.)

Ans. The substance of the letters was this: He had written me previous, making a proposition for me to take hold and prosecute the suit, but did not propose to put any money in it. These letters contained another proposition, that if I would go on and prosecute the suit that I should hold that land deeded to me November 29th, 1867, so I could tender it, if necessary, to defendants if I beat in the suit. If I got beat in the suit I was to have the land to sell to help pay the expenses of prosecuting said suit. As before stated, I took those letters to Williams and Goodwin, and have not seen them since Williams left.

(Answer objected to as incompetent and not proper in rebuttal.)

Inter. 10. Have you since then and do you now hold the title to said land in pursuance of the terms of said letters?

(Objected to as leading and incompetent.)

Ans. I do.

Inter. 11. Did you forward to McLean your note for one hundred and fifty dollars, as requested by him in his said letter of November 29th, 1867?

(Objected to.)

Ans. I did.

Inter. 12. Did you ever pay it?

(Objected to as immaterial.)

329 Ans. I did not.

Inter. 13. What became of it, if you know?

(Objected to.)

Ans. I do not recollect whether he sent it back to me or not. My impression is that it was not sent back to me.

Inter. 14. If there is anything further you wish to state in explanation of the transaction between you and McLean referred to in his said letter of November 29th, 1867, and the subsequent arrangement which you have testified to as effecting your holding said land, you may state the same, taking care not to repeat what you have already stated unless necessary to a correct understanding of the facts.

(Objected to.)

Ans. In our correspondence in relation to the matters left in my hands, as I said before, he had made propositions to me to prosecute the said suit one January 30th, 1867. I had not accepted of any of the propositions he had made to me for the reason that he put no money in it or property to help pay expense of prosecuting. In these letters referred to as being in the possession of Williams and Goodwin he proposed to put this land in my hands, deeded to me, if I would prosecute the suit, as before stated by me, to help pay expenses of prosecuting this suit if I got beat, and to tender to them if necessary if I beat. I did not make any arrangement to prosecute the suit until after I had received these letters. I think it was in 1868 or 1869 that I received those letters, and I employed Goodwin and Williams in 1869. This is what I wish to explain at the time I stated about the deed and letter from McLean to me, dated November 29th, 1867, but did not have a chance.

(Answer objected to as not responsive and otherwise incompetent.)

330 Second recross-examination:

Cross-inter. 1st. Why did not you have a chance to explain it?

Ans. Because the question was put in such a way. I stated at the time that I wanted to explain about letter and deed, etc.

Cross-inter. 2d. Have not you been told time and again during this examination, by your own counsel as well as by the examiner and myself, in giving your answers to tell the examiner just what you desired written down?

Ans. I have; but then when I commenced telling they would stop me. I said I wished to explain about that letter. About that time they adjourned.

Cross-inter 3. When giving your answers to the last question asked you by your counsel this morning, did you refer to and read from a number of slips of paper held in your hands?

Ans. I referred to dates, which I made a memorandum of on a piece of paper.

Cross-inter. 4. When did you make the memoranda on that paper?

Ans. This morning.

Cross-inter. 5. What dates did you set down?

(Objected to as immaterial and not proper cross-examination.)

Ans. Set down the date of when I employed Goodwin and Williams; date of letter received from McLean in reference to a proposition he made, &c.

Cross-inter. —. What letter?

(Objected to same as last.)

Ans. Letter dated January 30th, 1867.

Cross-inter. 7. You had that letter in your hands, did you not, while answering the last question asked you by Mr. Bardwell?

(Objected to as immaterial and not proper cross-examination.)

Ans. I had it in my hand with other papers, but did not refer to it; only my memorandum.

Cross-inter. —. That is a letter from McLean to you, is it not?

Ans. Yes.

Cross-inter. 9. May I read it?

Ans. Yes.

Cross-inter. 10. How did you fix so as to put on your mem-
331 oranda the date when you employed Goodwin and Williams?

(Objected to as immaterial and improper cross-examination.)

Ans. They gave me a receipt for the papers I left with them; the date of that receipt shows the date I employed them.

Cross-inter 11. Will you please show me that receipt?

(Objected to as incompetent, immaterial, and counsel for complainant, without seeing the paper, objects to the production thereof at this time, and insists that the witness shall not produce the same, meaning that receipt.)

Ans. I don't think it is proper.

Cross-inter. 12. Will you please produce that receipt and allow it to be attached to your deposition as an exhibit?

(Counsel for complainant, without yet seeing the paper or knowing its contents, objects as before.)

Ans. I do not think it proper.

Cross-inter. 13. Please answer my question directly. Will you produce the receipt, to be attached to your deposition as an exhibit?

Ans. No.

Cross-inter. 14. Who wrote that receipt, Goodwin or Williams?

Ans. Goodwin.

Cross-inter. 15. Is it signed Goodwin and Williams or how is it signed?

(Objected to as immaterial and improper cross-examination.)

Ans. Goodwin and Williams.

Cross-inter. 16. What is the date of it?

(Objected to as immaterial and improper cross-examination.)

Ans. October, 1869.

Cross-inter. 17. What day in October, 1869?

Ans. 19th.

Cross-inter. 18. Before giving this last answer did you examine a memorandum book?

Ans. I looked at a date on a memorandum book.

Cross-inter. 19. When did you make that memorandum?

Ans. I did not make it at all.

Cross-inter. 20. Who did?

332 Ans. George P. Goodwin.

Cross-inter. 21. When?

Ans. At the time.

Cross-inter. 22. At what time?

(Objected to as immaterial and improper cross-examination.)

Ans. At the time the paper was dated.

Cross-inter. 23. Is it the receipt you have spoken of?

(Objected to as immaterial and not proper cross-examination.)

Ans. It is.

Cross-inter. 24. Do you decline to produce it?

(Counsel of complainants still objects to the production of the receipt, having examined the same and believing it to be incompetent, but leaves the witness to act as he sees fit in reference to its production in answer to this question.)

Ans. I do.

Cross-inter. 25. Yesterday you gave us, at my request, the dates of what you said were all the letters you had with you that were written to you by McLean. Why did -ou not then give us the dates of the two you have produced and which are marked Exhibits 20 and 21?

Ans. I do not know that I did not give them. I had them in my lap as I picked them up.

Cross-inter. 26. Tell me the date of the two letters you say you gave to Goodwin and Williams.

Ans. In 1868 or '9.

Cross-inter. 27. Do you know which year it was?

Ans. I could not say positively.

Cross-inter. 28. Which year do you think it was?

Ans. I am inclined to think it was 1869; I am not positive.

Cross-inter. 29. Are you certain it was either 1868 or 1869?

Ans. I am.

Cross-inter. 30. Will you allow this letter from McLean to you, dated January 30, 1867, to be attached to your deposition as an exhibit?

Ans. I will consult with my attorney, and, if he thinks proper, I will do so.

333 (Counsel for complainant desires the letter to be attached, subject to proper objections as to its competency at this time.)

Cross-inter. 31st. After having consulted your attorney state whether the letter may be attached as an exhibit.

Ans. It may, with his objections, be attached.

(Witness here produced the letter referred to, and it is hereto attached as part of this deposition, subject to above objections, and marked Exhibit 23.)

Cross-inter. 32. Why did you tell me yesterday at the commencement of your cross-examination that you acquired your half interest in the result of this suit in 1864 or '5?

Ans. Because McLean said to me when he was here in 1861 and afterwards what he would give to prosecute it, but I did not really acquire the half interest you speak about until I had made this agreement. I suppose that is what I meant if — so stated yesterday.

MARTIN L. ARNOLD.

Subscribed and sworn to before me this 18th day of May, A. D. 1883.

DWIGHT HEATON, *Examiner.*

334 TUESDAY, *July 10th*, 1883.

IRA W. LEWIS, a witness produced on behalf of the complainants, being first duly sworn according to law, in answer to questions testified as follows, to wit:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Answer. Ira W. Lewis; age, 41 years; occupation, clerk of circuit court of Lee county and *ex officio* recorder; residence, Dixon, Lee county, Illinois.

Inter. 2. Do you know the parties to this suit or either and which of them, and how long have you known them, respectively?

Ans. I know the defendants Lot Chadwick and William E. Ives, and was formerly somewhat acquainted with the defendant Henry Clapp. I have been acquainted with defendant Chadwick about thirty years and with defendant Ives about twenty. I was acquainted — Henry Clapp two or three years. I have not seen him that I know of for ten years. The other parties I am not acquainted with.

Inter. 3rd. You have been engaged also in the buisness of making abstracts of title to real estate from the records of said Lee county, have you not?

Ans. I have.

Inter. 4. State for what lenght of time you have been engaged in that buisness, and give us some idea of its extent.

Ans. I have been making abstracts of titles from the records for thirteen years, and for the past ten years I should think it had occupied about one half of my time until the last year. I should think in the last ten years about three-fourths of all the abstracts that have been made in the county have been made by my partner, Mr. Johnson, and myself. Mr. Johnson has been associated with me now between five and six years. During that time the
335 work of making abstracts has been about equally divided between us.

Inter. 5. How long have you been recorder?

Ans. One year the sixth day of this month.

Inter. 6. Have you examined the records of said Lee county as to the title of the following-de-cribed premises: The northeast quarter of section 33, town. 21, range 11; the undivided half of the east

half of the northwest quarter of section 33, township 21, range 11; the northeast quarter of the southeast quarter of section 33, town. 21, range 11; the undivided half of the east half of the southwest quarter of section 28; the northwest quarter of the southwest quarter and the west half of the northwest quarter of section 34, all in township 21, range 11, in Lee county? If so, state, if you can, in whom the legal title to said tracts was severally vested on the 4th day of December, 1855, as appears from the records of said Lee county.

(Objected to.)

Ans. I have examined the records of all those tracts of land. I find that one John F. Clapp entered the east half of the southwest quarter of section 28 and the east half of the northwest quarter of section 33, in township 21 north, range 11 east, of the 4th P. M., in Lee county, July 24th, 1850, and on October 14th, 1853, conveyed both of said tracts to Jason Clapp and Edwin Clapp; and that John S. Crow entered the northeast quarter of the southeast quarter of section 33, and the west half of the northwest quarter of section 34, and the northwest quarter of the southwest quarter of section 34, in town. 21, range 11, October 25th, 1852, and conveyed the same to Jason Clapp October 10th, 1853; and that Lewis Clapp entered the northeast quarter of section 33, township twenty-one, range 11, October 25th, 1852, and conveyed the same to Edwin Clapp October 29th, 1855; and that on November 28th, 1855, Jason Clapp
336 conveyed to Ruggles W. Clapp the west half of the northwest quarter of section 34, the northwest — of the southwest quarter of section 34, the northeast quarter of the southeast quarter of section 33, the undivided one-half of the east half of the northwest quarter of section 33, and the undivided one-half of the east half of the southwest quarter of section 28, all in township 21, range 11; and that on the 4th day of December, 1855, Ruggles W. Clapp and his wife executed a mortgage to Edwin W. McLean conveying the northeast quarter of section 33, also the undivided one-half of the east half of t-e northwest quarter of section 33, and the undivided one-half of the east half of the southwest quarter of section 28, and the northwest quarter of southwest quarter of section 34, the west h-lf of the northwest quarter of section 34, and the northeast quarter of the southeast quarter of section 33, and t-e undivided one-half of the east half of the northwest quarter of section 33, and the undivided one-half of the east half of the southwest quarter of section 28, all in township twenty-one, range 11, to secure five thousand nine hundred and eighteen dollars and $\frac{66}{100}$; but I find no record of a deed from Edwin Clapp to Ruggles W. Clapp conveying the northeast quarter of section 33, and the undivided one-half of the east half of the southwest quarter of section 28, and the undivided one-half of the east half of the northwest quarter of section 33, of said township 21, range 11, which Edwin Clapp appears to have owned October 25th, 1852.

Inter 7. When and in what book and page was this mortgage recorded?

Ans. It was recorded December 6th, 1855, in Book E of Mortgage Records, on pages 346 to page 348.

Inter. 8. Do you find in the records of said county any release of said mortgage?

Ans. I do not.

337 Inter. 9. What search have you made to ascertain whether or not it has been released on said records or for any record of release?

Ans. I have examined the margin of the record where the mortgage is recorded and the tract index for a release deed, and have also examined the private abstract books belonging to myself and Mr. Johnson.

Inter. 10. Do you find a record of any other conveyances or encumbrances of the tracts described in said mortgage prior to the date of its being recorded other than those already named by you?

Ans. No; I find none.

Inter. 11. Examine the deed from William E. Ives and wife to Edwin W. McLean, dated June 4th, 1860, of a part of lot 5, in block 11, in the town of Amboy, and in evidence in this case as Exhibit 15 to the evidence of Martin L. Arnold, and state, if you can, in whom the legal title of record to said premises was vested at the date of said deed.

(Objected to.)

Ans. I have examined the deed shown me and all the conveyances of record of lot 5, in block 11, in the town of Amboy, and I cannot tell in whom the legal title to said tract was vested on the 4th day of June, 1860, the description in said deed being indefinite and irregular.

Inter. 12. Please attach a diagram of said lot and by reference thereto explain in what respect the description referred to is indefinite.

Ans. Lot 5, in block 11, in the town of Amboy, is a fractional lot bounded on the east by lot 4, in the same block; on the north by Main street, and on the southwest by what appears to be an alley, although the word alley does not appear on the plat of the town. This lot 5 has a front on Main street, according to the plat, of $67\frac{1}{10}$ feet. The lenght of the other two lines, the east and west lines, are not given. The annexed diagram, marked Exhibit "A," is

338 an enlarged plat of said lot 5, drawn on a scale of twenty feet to the inch. The boundaries of the lot are marked with red ink. From the records it appears that one William E. Ives was, on the 28th day of December, 1855, the owner of said lot; that on that day executed a deed to Joseph D. Weddell conveying the east part of said lot, fronting 36 feet on Main street. The part so conveyed is marked on the annexed diagram "Weddell," the western boundary marked by a line in black ink and the boundaries of the Weddell tract shaded with greener. In a deed shown me, to wit, the deed from William E. Ives and wife to Edwin W. McLean, the boundary of the tract conveyed is described as commencing 31 feet west of the northeast corner of said lot, "which point is five feet

east of the northwest corner of the Weddell tract;" from thence west 18 feet; thence south on a line parallel with the west line of said lot to the alley (while, in fact, the west line of the lot is the east line of the alley); thence along the alley to the land conveyed to J. D. Weddell; thence north along the west line of the said land conveyed to J. D. Weddell to the place of beginning.

(The witness here produced a plat, which is hereto attached and marked Exhibit "A" and made a part of this deposition.)

Inter. 13. Do you find of record any conveyance of the land embraced in the description in the said deed from Ives to McLean conveying the same to said Ives? If so, give the date of such deed and that part of lot 5 described therein.

Ans. I find a record of a deed from Allen E. Wilcox and wife to William E. Ives, dated June 21st, 1855, conveying all of lot five.

Inter. 14. Did said Ives ever convey the same or any part thereof, as appears of record? If so, state the date of such conveyances and to whom and what part conveyed.

Ans. I find a record of a deed from William E. Ives and
339 wife to Joseph D. Weddell, dated December 28, 1855, conveying the east part of said lot, the part conveyed having a front of 36 feet on Main street, and on the 4th day of March, 1856, William E. Ives conveyed by trust deed to David Welty the remainder of said lot to secure the payment of four hundred dollars, and also a deed from said David Welty as trustee, dated April 29th, 1865, conveying to Norman H. Ryan the same premises described in the trust deed from Ives to Welty and marked on the annexed diagram marked A as "Ryan;" also a deed from William E. Ives to George Ryon, dated July 14th, 1859, conveying all interest of said Ives to said lot 5, and also a deed from William E. Ives and wife to Edwin W. McLean, dated June 4th, 1860, described in my answer to interrogator- 12.

Inter. 15. When was the deed of said premises from Ives to George Ryon recorded?

Ans. On the day of its date, July 14th, 1859.

Inter. 16. Please produce, to be attached as exhibits to your deposition, correct copies of the record of the trust deed referred to from Ives to Welty and the trustee's deed from Welty to Norman H. Ryan.

Ans. (Witness here produced the papers hereto attached and marked Exhibits "B" and "C" respectively and made a part of this deposition.)

Inter. 17. Do you find that any part of sections 5 and 6, in township 19, range 10, Lee county, was conveyed to Ruggles W. Clapp? If so, state the date of the conveyance and by whom conveyed and the property described.

Ans. I find the record of a deed from Amaziah Carpenter to Ruggles W. Clapp, dated March 30th, 1857, conveying the east half of the southeast quarter of section 6 and a part of the southeast quarter of the northeast quarter of section 6, commencing at the southeast corner of said northeast quarter of section 6, thence west

on half-section line 80 rods; thence north 55 rods; thence
340 east 80 rods; thence south 55 rods to the place of beginning—37½ acres; and also a part of the southwest quarter of the southwest quarter of section 5, commencing at the southwest corner of said section, thence north on section line 80 rods; thence east 25 rods; thence south 80 rods; thence west 25 rods to the place of beginning—12½ acres, and containing in all one hundred and twenty acres, all being in town. 19 north, range 10 east, in Lee county.

Inter. 18. Do you find the record of any conveyance of said premises to Amaziah Carpenter? If so, state the nature and date of the same.

Ans. I find no record of any deed conveying said land to Amaziah Carpenter.

Inter. 19. Do you find a record of any agreement or transaction in relation to said lands to which said Carpenter was a party? If so, state the nature of the same and the parties thereto.

Ans. I find the record of an agreement between Jacob Armstrong and Amaziah Carpenter, dated Jan'y 17th, 1855, in which Jacob Armstrong agrees to convey said lands upon the payment of one thousand dollars in the manner therein described.

Inter. 20. Please cause a correct copy of said agreement to be made, and attach the same as an exhibit to your deposition.

Ans. The witness here produced a paper, marked Exhibit "D," which is hereto attached and made a part of this deposition.

Inter. 21. Do you find the record of any conveyances from Jacob Armstrong of said lands? If so, give the date, the names of the grantees, and the nature of such conveyances.

(Objected to.)

Answer. I find the record of a warranty deed from Jacob Armstrong to Moses Morse, dated September 20th, 1862, conveying said
341 tracts, with other land and a trust deed from Jacob Armstrong, dated March 18th, 1859, conveying to John Stevens all of said tracts, with other land, to secure the payment of $961.00, which trust deed was released Oct. 23rd, 1860, by a release deed.

Inter. 22. Do you find of record any conveyance under and — pursuance of the agreement you refer to between Armstrong and Carpenter?

Ans. I find no record of any deed from Jacob Armstrong conveying said land excepting the deed to Moses Morse, and in this deed to Moses Morse no reference is made to said agreement or any agreement.

Inter. 23. Do you find in your office the record of a chancery suit commenced in 1858, wherein Jacob Armstrong was complainant and Amaziah Carpenter, Ruggles W. Clapp, and William Jones were defendants?

Ans. I find such a suit on the docket at the April term, 1858, and remaining on the docket until the May term, 1859.

Inter. 24. Give the date and parties to all conveyances you find

of record on the S. E. ¼ of the S. E. ¼ of sec. 30, town. 20, range 11, in said Lee county.

Ans. I find the record of a deed from Richard F. Adams and wife to Ruggles W. Clapp, dated November 27th, 1856, and a deed from Ruggles W. Clapp and wife to E. W. McLean, dated December 10th, 1857, conve-ing said land; also a deed from James R. Ives and wife to William E. Ives and Charles E. Ives, dated August 24th, 1878, conveying said tract and other lands.

Inter. 25. Give the date and parties to all conveyances you find of record on the east half of the N. E. ¼ of S. W. ¼ sec. 36, town. 20, range 10, in said Lee county, since and including a deed thereof to Ruggles W. Clapp.

Ans. I find a record of a deed from Cephas Clapp and wife to Ruggles W. Clapp, dated September 15th, 1856, and a deed
342 from Ruggles W. Clapp and wife to E. W. McLean, dated December 10th, 1857, conveying said lands.

Inter. 26. Do you find the record of a conveyance to Ruggles W. Clapp of the S. W. ¼ of sec. 12, town. 20, range 10, in said Lee county? If so, give the date and grantor of the same.

Ans. I find the record of a deed from Jonas Ely, Jr., and wife and Daniel Throckmorton and wife to Ruggles W. Clapp, dated November 6th, 1856, conveying the undivided two-thirds of the S. W. ¼ of said sec. 12, and a deed from Roderick D. Bird and wife to R. W. Clapp, dated Dec. 1st, 1856, conveying the undivided one-third of said S. W. ¼.

Inter. 27. Describe the conveyances, if any, of said tract made by said Clapp.

Ans. I find the record of a mortgage from Ruggles W. Clapp and wife to Daniel Throckmorton to Jonas Ealy, dated December 1st, 1856, and recorded in Book G of Mortgages, page 89, conveying the undivided two-thirds of said tract to secure the payment of 1,666.68, due two years after its date, and a deed from said Ruggles W. Clapp and wife to E. W. McLean, dated Dec. 10th, 1857, conveying said southwest quarter.

Inter. 28. When and in what book was the last-mentioned deed recorded?

Ans. It was recorded March 11th, 1858, in Book T of Deeds, on page 187.

Inter. 29. Was said mortgage to Throckmorton and Ealy foreclosed, as appears from the records of your office? And, if so, give the names of the parties and the date of the deed executed in pursuance thereof.

(Objected to as leading and otherwise incompetent.)

Inter. 29. Do you find in your office any record of a foreclosure of said mortgage to Throckmorton and Ealy?

Ans. I find a record of the decree of foreclosure of the mortgage from Ruggles W. Clapp and wife to Throckmorton and Ealy and recorded in Book G of Mortgages, page 89; said decree is
343 dated December 22rd, 1859, and is recorded in Book A of Chancery Records on pages 263–265.

Inter. 30. Do you find any record of sale in pursuance of said decree?

Ans. I find the record of a certificate of sale of the undivided two-thirds of the S. W. ¼ of said sec. 12 by the master in chancery of the Lee county circuit court, in pursuance of said decree, to Jonas Ealy and Daniel Throckmorton, dated April 27th, 1860, filed the same day, and recorded in Book B of Certificates of Levy and Sale, page 90.

Inter. 31. Do you find the record of any deed made in pursuance of said certificate of sale? If so, by whom was it made and to whom, and the date thereof?

Ans. I find the record of the deed from the master in chancery of said Lee county to Jonas Ealy and Daniel Throckmorton, dated Sept. 2d, 1861.

Inter. 32. Please make certified copies of said decree and deed and have the same attached as part of your deposition.

Ans. Witness here presented the papers marked Exhibits "E" and "F" respectively, and hereto attached as part of this deposition.

Inter. 33. Do you find the record of any other conveyance of said tract to Ruggles W. Clapp?

Ans. I do not.

Inter. examination adjourned until 9 a. m., Wednesday, July 11th, 1883.

WEDNESDAY, *July* 11*th*, 1883—9 o'clock a. m.

Examination of IRA W. LEWIS resumed:

Inter. 34. Please attach certified copy of deed of a portion of said tract from McLean to Cephas Clapp.

Ans. Witness here produced paper marked Exhibit "G," which is hereto attached and made a part of this deposition.

Inter. 35. At whose instance does it appear from the rec-
344 ords "Wyman's Addition" of the town of Amboy was surveyed, laid out, and platted?

(Objected to.)

Ans. John B. Wyman.

Inter. 36. Do you find a record of any conveyance of lot 3, in block 25, of said addition by said Wyman? If so, give date of same and parties.

(Objected to.)

Ans. I find a record of a deed from John B. Wyman & wife to K. F. Booth, dated December 27th, 1854, conveying said lot.

— 37. Do you find the record of any conveyance of said lot by said Booth? If so, to whom and of what date?

(Objected to.)

Ans. I find the record of a deed from Kirtland F. Booth and wife to Ruggles W. Clapp, dated March 12th, 1855, conveying said lot 3.

Inter. 38. Do you find a record of a deed of said lot from said Clapp to William E. Ives? If so, please attach a certified copy thereof.

Ans. I find the record of a deed to William E. Ives from Ruggles W. Clapp and wife, dated Feb'y 16th, 1858, conveying said lot 3 and other lots in said block 25, and here is a certified copy.

(Witness here produced a paper which is hereto attached, marked Exhibit H, and made a part of this deposition.)

Inter. 39. Do you find in your office the files and record of a chancery suit instituted to foreclose the mortgage from Ruggles W. Clapp to Edwin W. McLean first by you referred to?

Ans. I find the files of the suit referred to in the interrogatory. The bill was filed May 30th, 1857, and in Chancery Record A, page 127, is the record of an order, dated at the June term, 1857, dismissing said suit without prejudice.

Inter. 40. Please attach a certified copy of the summons,
345 service, and return thereof in said cause and of the record of said order of dismissal.

Ans. Witness here presented papers marked Exhibits "J" and "K" respectively, which are hereto attached and made a part of this deposition.

Inter. 41. Do you find a record of any conveyances by Edwin W. McLean or by his personal representatives, assigns, or by any person in his name of any of the lands referred to in your foregoing deposition other than those therein mentioned?

Ans. I have mentioned all the conveyances of said lands by McLean or by any one for him or representing him which I have found of record.

Inter. 42. State to what extent you have examined the records of your office as to said lands.

Ans. I have made the same search and with the same care I would in compiling an abstract of title to the lands so far as I have been requested—search the records.

Inter. 43. As to what tracts have you not made such search down to this date?

Ans. I have examined all the conveyances of all the tracts mentioned in the deposition which are shown or referred to in the tract indexes of the office, to wit, in the last two years.

JULY 11TH, 1883.

Examination adjourned until such time as it shall be resumed by agreement.

JULY 31ST, 1884—2 o'clock p. m.

Examination of the witness, IRA W. LEWIS, resumed by agreement of counsel:

Interrogatory 44. Since the last adjournment, in taking your deposition, have you further examined the records of your office for conveyances of any of the tracts referred to in your foregoing deposition?

Ans. I have.

Inter. 45. What was the nature and extent of such examination?

Ans. It completes the examination to this date.

346 Inter. 46. In any of the records of your office have you been able to find the record of any release, assignment, or transfer of the mortgage from Ruggles W. Clapp to Edwin W. McLean, already referred to, or any conveyance by Edwin W. McLean or purporting to be by his personal representatives, heirs, or assigns or by any person in his name of any of the lands you have described in this deposition other than the conveyances you have already mentioned?

Ans. No; I have not.

Inter. 47. Have you made diligent search to ascertain whether there is in the records of your office the record of any such instrument or instruments?

Ans. I have made a careful and diligent search.

Cross-examination:

Cross-inter. 1st.-Please state who were the parties complainant and defendant to the foreclosure suit mentioned in your answer to direct interrogatory 29.

Ans. Jonas Ely and Daniel Throckmorton were complainants, and Ruggles W. Clapp, Emily Clapp, and Cyrus Craig were defendants.

IRA W. LEWIS.

Subscribed and sworn to before me this 31st day of July, A. D. 1884.

DWIGHT HEATON, *Examiner.*

(Here follows diagram marked p. 347.)

348 EXHIBIT "B."

William E. Ives
to
Drainage Comm'rs of Lee County.

Whereas William E. Ives, party of the first part, of Amboy, in the county of Lee and State of Illinois, has executed certain promissory note of even date herewith, payable to David Welty, drainage commissioner, or order one year after date thereof, for the sum of four hundred dollars, with interest at the rate of ten per cent. p'r annum after due:

Now, therefore, the said William E. Ives, party of the first part, to secure the payment of said note according to the tenor and effect, in consideration of one dollar and the further sum of four hundred dollars, the receipt whereof is confessed, doth grant, bargain, and sell unto *to* David Welty, of the county of Lee and State of Illinois, heirs and assigns forever, the premises described as follows:

Lot (13) thirteen, in block No. sixteen (16), in Wyman's Addition to

the town of Amboy; lot four (4), in block (8) eight, in Farrell Addition No. 2 to said town, and a part of lot five (5), in block eleven (11), in Amboy, described as follows, to wit: Commencing at the N. W. corner of said lot, running thence on the north line thereof east 31½ feet, thence at right angles south to the alley, thence along the west side of said lot to the place of beginning, situated in the town of Amboy, county of Lee, and State of Illinois, together with all and singular the privileges and appurtenances thereunto belonging, in trust, nevertheless, that in case default be made in the payment of said note or any part thereof according to the tenor and effect of said note, then on the application of the legal holder of said
349 note the said David Welty, after publishing a notice in a newspaper printed in the county of Lee thirty (30) days before the day of sale, to sell the said premises and all right and equity of redemption of the said William E. Ives, party of the first part, his heirs and assigns therein, at public auction, at the court-house door, in said county, to the highest bidder for cash, at the time mentioned in such notice, and to make, execute, and deliver to the purchaser or purchasers thereof a deed or deeds for the premises so sold, and out of the proceeds of such sale to pay "*to pay*" all costs and expenses incurred in advertising and selling said premises, and also the principal and interest due on said note; and the said William E. Ives, party of the first part, for himself, his heirs, executors, and administrators, covenants with the said David Welty that he is seized of said premises in fee simple, and that he has a good right and full power to grant, bargain, and sell the same in form aforesaid; that the same are free from all incumbrance, and that he will and his heirs, executors, and administrators shall forever warrant and defend the same against the lawful claims of all persons.

Signed and sealed this fourth day of March, A. D. 1856.

WILLIAM E. IVES. [SEAL.]

STATE OF ILLINOIS, } *ss:*
Lee County, }

I, George E. Haskell, a justice of the peace in and for said county, in the State aforesaid, do hereby certify that William E. Ives, who is personally known to me as the same person whose name is subscribed to the within-named trust deed as having executed the same, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

350 Given under my hand and seal this fourth day of March, in the year of our Lord one thousand eight hundred and fifty-six.

GEORGE E. HASKELL, *J. P.* [SEAL.]

Filed for record the 4th day of March, A. D. 1856.

STATE OF ILLINOIS, } ss:
Lee County, }

I, Ira W. Lewis, clerk of the circuit court and *ex officio* recorder in and for said Lee county, in the State aforesaid, and keeper of the records and seal of said court, do hereby certify that the foregoing is a true and correct copy of an instrument of writing filed for record in the recorder's office of said county on the fourth day of March, A. D. 1856, and duly recorded in — F of Mortgages, on page 117 thereof, as appears from the records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 28th day of June, A. D. 1883.

[SEAL.] IRA W. LEWIS, *Clerk.*

351 "EXHIBIT C."

David Welty
to
Norman H. Ryan.

This indenture, made this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and sixty-five, between David Welty, of the county of Lee and State of Illinois, party of the first part, and Norman H. Ryan, — county of Lee and State of Illinois, of the second part, witnesseth:

That whereas William E. Ives, of the county of Lee and State of Illinois, did by a certain deed of trust dated the fourth day of March, A. D. 1856, which deed is recorded in the recorder's office of the county of Lee, in the State of Illinois, among other lands did convey to the said party of the first part all the premises hereinafter described to secure the payment of one certain promissory note in said deed particularly mentioned and upon certain trusts in said deed particularly declared; and

Whereas default hath been made in the payment of said note, the said premises were by the said party of the first part duly noticed for public sale at the door of the court-house, in the county of Lee and State of Illinois, on the twenty-ninth day of April, A. D. 1865, in the manner prescribed in and by said deed of trust, and were, upon the day and year and at the place last mentioned aforesaid, in pursuance of said notice, sold at public sale, and at said sale the said party of the second part was the highest and best bidder therefor and bid for the tract first hereinafter named the sum of five hundred and ten $\frac{16}{100}$ dollars, a part of lot 5, in block 11, in Amboy:

Now, therefore, these presents witness that the said party of the first part, in pursuance of the power and authority in him
352 vested in and by said deed of trust and in consideration of the sum of one dollar, and also the further sum of five hundred and ten $\frac{16}{100}$ dollars, to the said party of the first part paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath and doth hereby convey, remise, release, and quitclaim to the said party of the second part, his heirs and assigns forever, all the right, title, and interest, as well in law *or* in equity,

which the said party of the first part hath acquired by virtue of the trust deed above mentioned of, in, and to all that certain tract, piece, or parcel of land situated in the county of Lee and State of Illinois, and described as follows, to wit:

A part of lot five (5), in block eleven (11), in Amboy, as described as follows, to wit: Commencing at the northwest corner of said lot, running thence on the north line "*line*" thereof east thirty-one and one-half feet, thence at right angles south to the alley, thence along the west side of said lot to the place of beginning—

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appeartaining, and the reversions, remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, claim, and demand whatsoever, as well in law as in equity, of the said party of first part of, in, and to the same and any and every part thereof, with the appurtenances, which the said party of the first part acquired by virtue of said trust deed:

To have and to hold the aforesaid right, title, and interest of the said party of the first part unto the said party of the second part, his heirs and assigns forever, as fully and absolutely as the said party of the first part can, by virtue of the power and authority in him and by said trust deed vested, convey the same.

353 In witness whereof the party of the first part hath hereto set his hand and seal the day and year first above written.

DAVID WELTY, *Trustee.* [SEAL.]

[Revenue stamp, $1.00.]

In presence of—

——— ———.

STATE OF ILLINOIS, } ss:
Lee County, }

I, Stephen S. Williams, notary public in and for said county, in the State aforesaid, do hereby certify that David Welty, personally known to me as the same person whose name is subscribed to the foregoing instrument of writing, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this twenty-ninth day of April, A. D. 1885.

[SEAL.] STEPHEN S. WILLIAMS,
Notary Public.

Filed for record April 29th, 1865, at 1½ o'c. p. m.

STATE OF ILLINOIS, } ss.:
Lee County, }

I, Ira W. Lewis, clerk of the circuit court and *ex officio* recorder in and for said Lee county, in the State aforesaid, and keeper of the records and seal of said court, do hereby certify that the foregoing

is a true and correct copy of an instrument of writing filed for record in the recorder's office of said county on the twenty-ninth day of April, A. D. 1865, and duly recorded in Book 9 of Deeds, page 206 thereof, as appears from the records of my office.

In testimony whereof I have hereunto set my hand and affixed seal of said court this 28th day of June, A. D. 1883.

[SEAL.] IRA W. LEWIS, *Clerk.*

354 "EXHIBIT D."

Jacob Armstrong
to
Amaziah Carpenter.

Articles of agreement made this seventeenth day of January, in the year of our Lord one thousand eight hundred and fifty-five, between Jacob Armstrong, of the county of Lee and State of Illinois, of the first part, and Amaziah Carpenter, of the same place, of the second part, witness-th:

That the said party of the first part hereby covenants and agrees that if the party of the second part shall first make the payments and perform the covenants hereinafter mentioned on his part to be made and performed the said party of the first part will convey and assure to the party of the second part in fee simple, clear of all incumbrances whatever, by a good and sufficient warranty deed, the following lot, piece, or parcel of ground, viz: The east half of the southeast quarter of section six and a part of the southeast quarter of the northeast quarter of the same section, to wit, commencing at the southeast corner of said N. E. ¼, thence west on half section line 80 rods; thence north on the line of said forty-acres tract 55 rods; thence at right angles east 80 rods to section line; thence south on the section line 55 rods to place of beginning, 37½ acres.

Also a part of the southwest quarter of the southwest quarter of section five, to wit: Commencing at the southwest corner of said section, thence north on section line 80 rods; thence east, on north line of said 40-acre tract, 25 rods; thence south, parallel to first line, 80 rods to section line, 25 rods to place of beginning, 12½ acres; in all, 120 acres of land, and all being in town. 19 N., R. 10 E. of 4th P. M., Lee county.

355 And the said party of the second part hereby covenants and agrees to pay the said party of the first part the sum of one thousand dollars in the manner following: One hundred dollars cash in hand, the receipt whereof is hereby acknowledged, and the balance, nine hundred dollars, in nine equal annual *annual* payments of one hundred dollars each, payable on the first day of April, in the years 1856 to 1864, both inclusive, the interest being due and payable at Dixon, Illinois, in advance, to wit, on the first day of April at the commencing of each year aforesaid, with interest at the rate of six per centum per annum, payable annually, on the whole sum remaining from time to time unpaid, and to pay all taxes, assessments, or impositions that may be legally levied or im-

posed upon said land subsequent to the year 1865; and in case of the failure of the said party of the second part to make either of the payments or perform any of the covenants on his part hereby made and entered into, this contract shall be, at the option of the party of the first part, *be* forfeited and determined and the party of the second part shall forfeit all payments made by him on this contract, and such payments shall be retained by the said party of the first part in full satisfaction and in liquidation of all damages by him sustained, and he shall have the right to re-enter and take possession of the premises aforesaid. It is mutually agreed that all the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, and assigns of the respective parties.

In witness whereof the parties to these presents have hereto set their hands and se-ls the day and year first above written.

JAMES ARMSTRONG. [SEAL.]
A. CARPENTER. [SEAL.]

Signed, sealed, and delivered in presence of—
I. S. BOARDMAN.

356 Filed for record M'ch 23, 1857, at 5 p. m.

STATE OF ILLINOIS, } ss:
Lee County, }

I, Ira W. Lewis, clerk of the circuit court and *ex officio* recorder in and for Lee county and State aforesaid, do hereby certify that the foregoing is a true and correct copy of an article of agreement filed for record in the recorder's office of said county on the 23rd day of March, A. D. 1857, and duly recorded in — B of Power of Attorney Records, at page 387 thereof, as appears from the records of my office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at my office, in Dixon, Ills., this 18th day of July, A. D. 1883.

IRA W. LEWIS, *Clerk.*

357 EXHIBIT "E."

JONAS ELY and DANIEL THROCKMORTON
vs.
RUGGLES W. CLAPP, EMILY CLAPP and CYRUS CRAIG. } Bill of Foreclosure.

DECEMBER 22ND, A. D. 1859.

Now, on this day, again come the said complainants, by Ives and and Ives, their solicitors; and it appearing that the said Cyrus Craig, one of the above-named defendants, had been duly served with process of summons, duly issued in this cause, and returned by the sheriff with his return endorsed thereon in the words and figures following, to wit:

"Served the within by leaving a true copy of the within with Cyrus Craig, this 20th day of April, 1859. The within-named Ruggles W. Clapp and Emily Clapp not found in my county.

LESTER HARDING, *Sheriff*,
By D. B. McKENNEY, *Deputy*."

And it also appearing that Ruggles W. Clapp and Emily Clapp, the other defendants, had been duly served with process by publication, duly published in the Amboy Times, a weekly newspaper published in said Lee county, which said publication and the certificate of the publisher of said newspaper have been duly examined by the court and approved and placed amongst the files in this case; and it also appearing that at a prior term of this court the said defendants, after being severally, three times, solemnly called, come not, but made default: Wherefore the said complainants' bill of complaint and the matters and things therein contained were taken as confessed against the said defendants, and this cause was thereupon — to the clerk of this court to compute and ascertain the amount due and owing to the said complainants by the said defendants
358 upon the notes and mortgage in said bill of complaint mentioned and set forth; and the said clerk having submitted to the court his report, the same being by the court examined, is approved and placed amongst the files in this cause. And it further appearing to the court, from evidence introduced and offered, that there is due to the said complainants from said defendants the sum of ($1,966.68) one thousand nine hundred and sixty-six dollars and sixty-eight cents, due on two promissory notes, each bearing date the first day of December, A. D. 1856, made and executed by said defendant, Ruggles W. Clapp, for the following sums, to wit: one note for the sum of eight hundred thirty-three and $\frac{84}{100}$ dollars, payable in one year from date, and one for the sum of eight hundred thirty-three and $\frac{84}{100}$ dollars, payable in two years from date, together with interest at the rate of six per centum per annum from their respective dates; and for the securing the payment of said notes the said defendants did, on the first day of December, A. D. 1856, make, execute, and deliver to the said complainants a certain deed of mortgage, as in said complainants' bill of complaint is set forth, which said mortgage is recorded in the recorder's office of said Lee county, in Book G of Mortgages, page 89, for the following-described real estate, situated in Lee county aforesaid, to wit:

One equal undivided two-thirds ($\frac{2}{3}$) of the southwest quarter of section No. twelve, in township No. twenty north, range ten east, of the 4th P. M., containing one hundred and sixty acres, more or less; also an equal undivided two-thirds ($\frac{2}{3}$) of a part of said section twenty-five (25), township No. twenty north, of range No. ten east, of the 4th P. M., and further described, to wit: Commencing at the southwest corner of the northeast quarter of the southwest quarter of section twenty-five, thence north forty rods, thence east
359 twent- rods, thence south forty rods, thence west twenty rods, to the place of beginning, containing five acres, more or less; and it further appearing that said mortgage was legally

executed, and acknowledged before William E. Ives, a notary public in and for said Lee county, in the State of Illinois, on the said first day of December, A. D. 1856:

It is now, therefore, ordered, adjudged, and decreed by the court that the said defendants pay to the said complainants the said sum of one thousand nine hundred and sixty-six dollars and $\frac{66}{100}$ *cents*, with interest thereon from the first day of December, A. D. 1859, on or before the fifteenth day of January, A. D. 1860, together with their costs and charges by them in this behalf expended; and that in default thereof the said Ruggles W. Clapp, Emily Clapp, and Cyrus Craig and all persons claiming or to claim the same be foreclosed from all equity of redemption and claim of, in, and to the said mortgaged premises and every part and parcel thereof; and that the said defendants deliver to the said complainants all deeds, demises, and writings relating to or concerning the same, and that all and singular the said premises be sold, and that Charles N. Levanway, one of the masters in chancery of this court, be, and he is hereby, ordered to sell the same, and that the same be sold at the door of the court-house, in Dixon, in Lee county aforesaid; that said master give four weeks' notice of the time and place of such sale by advertising in a newspaper published in said Lee county, and that out of the proceeds of such sale the said complainants be paid the sum of one thousand nine hundred and sixty-six dollars and sixty-eight cents, with interest thereon until the time of such sale, together with their costs and charges, and that the said master make, execute, and deliver to the purchaser or purchasers of said premises certificates of purchase therefor, and that he report his actings and
360 doings in the premises to this court.

STATE OF ILLINOIS, } ss:
Lee County, }

I, Ira W. Lewis, clerk of the circuit court in and for the said county, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of a decree rendered in the above-entitled suit at the November term of the Lee circuit court on the 22d day of December, A. D. 1859, and duly entered of record in Chancery Record A, at page 263 thereof.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court at Dixon, Ills., this 18th day of July, A. D. 1883.

IRA W. LEWIS, *Cler-.*

361 EXHIBIT F.

Ruggles W. Clapp *et als.*, by Master in Chancery, to Jonas Ely and Daniel Throckmorton. } Master's Deed.

Whereas, at the November term of the circuit court within and for the county of Lee and State of Illinois, in the year of our Lord one thousand eight hundred and fifty-nine, on the twenty-second

day of December in said year, in a certain suit, then pending in said court on the chancery side thereof, to foreclose a mortgage, wherein Jonas Ely and Daniel Throckmorton were complainants and Ruggles W. Clapp, Emily Clapp, and Cyrus Craig were defendants, the said court did make the following order and decree, to wit:

"It is ordered, adjudged, and decreed by the court that the said defendants pay to the said complainants the said sum of one thousand nine hundred and sixty-six dollars and $\frac{68}{100}$ *cents*, with interest thereon from the first day of December, A. D. 1859, on or before the fifteenth day of January, A. D. 1860, together with their costs and c-arges by them in this behalf expended, and that in default thereof the said Ruggles W. Clapp, Emily Clapp, and Cyrus Craig and all persons claiming or to claim the same be foreclosed from all equity of redemption and claim of, in, and to the said mortgaged premises and every part and parcel thereof; and that the said defendants deliver over to the said complainant all deeds, demises, and writings relating to or concerning the same, and that all and singular the said premises be sold, and that Charles N. Levanway, one of the masters in chancery of this court, be, and he is hereby, ordered
362 to sell the same, and that the same be sold at the door of the court-house, in Dixon, in Lee county, aforesaid; that said master give four weeks' notice of the time and place '*place*' of such sale by advertising in a newspaper in said Lee county, and that out of the proceeds of such sale the said complainants be paid the sum of one thousand nine hundred and sixty-six dollars and sixty-eight cents, with interest thereon until the time of such sale, together with their costs and charges, and that the said master make, execute, and deliver to the purchaser or purchasers of said premises certificates of purchase therefor, and that he report his actings and doings in the premises to this court;"

And whereas the said defendants failed to pay the said several sums in said decree and order specified at the time and in the manner specified; and whereas, on default being made as aforesaid, I, Charles N. Levanway, master in chancery of said Lee county, did first give public notice of said sale by the publication of an advertisement in the "Amboy Times," a newspaper printed and in gener*la* circulation in said Lee county, for four successive weeks previous to the day of sale, as by the terms of said decree I was ordered and directed to do, and on the twenty-seventh day of April, in the year A. D. 1860, in further compliance with the terms of said decree, at the north door of the court-house, in the city of Dixon, in said county, I did sell, at public vendue, to Jonas Ely and Daniel Throckmorton, who were the highest and best bidders, the said mortgaged premises in said decree and advertisement mentioned, for the sum of eight hundred and thirty dollars, to wit, the one equal undivided two-thirds of the southwest quarter of section No. twelve (12), in township No. twenty (20) north, range No. ten (10) east, of the fourth principal meridian, containing one hundred and fifty acres, more or less, for the sum of eight hundred dollars, and the remaining
363 portion of said mortgaged premises hereinafter described for the sum of thirty dollars:

day of December in said year, in a certain suit, then pending in said court on the chancery side thereof, to foreclose a mortgage, wherein Jonas Ely and Daniel Throckmorton were complainants and Ruggles W. Clapp, Emily Clapp, and Cyrus Craig were defendants, the said court did make the following order and decree, to wit:

"It is ordered, adjudged, and decreed by the court that the said defendants pay to the said complainants the said sum of one thousand nine hundred and sixty-six dollars and $\frac{68}{100}$ *cents*, with interest thereon from the first day of December, A. D. 1859, on or before the fifteenth day of January, A. D. 1860, together with their costs and c-arges by them in this behalf expended, and that in default thereof the said Ruggles W. Clapp, Emily Clapp, and Cyrus Craig and all persons claiming or to claim the same be foreclosed from all equity of redemption and claim of, in, and to the said mortgaged premises and every part and parcel thereof; and that the said defendants deliver over to the said complainant all deeds, demises, and writings relating to or concerning the same, and that all and singular the said premises be sold, and that Charles N. Levanway, one of the masters in chancery of this court, be, and he is hereby, ordered
362 to sell the same, and that the same be sold at the door of the court-house, in Dixon, in Lee county, aforesaid; that said master give four weeks' notice of the time and place '*place*' of such sale by advertising in a newspaper in said Lee county, and that out of the proceeds of such sale the said complainants be paid the sum of one thousand nine hundred and sixty-six dollars and sixty-eight cents, with interest thereon until the time of such sale, together with their costs and charges, and that the said master make, execute, and deliver to the purchaser or purchasers of said premises certificates of purchase therefor, and that he report his actings and doings in the premises to this court;"

And whereas the said defendants failed to pay the said several sums in said decree and order specified at the time and in the manner specified; and whereas, on default being made as aforesaid, I, Charles N. Levanway, master in chancery of said Lee county, did first give public notice of said sale by the publication of an advertisement in the "Amboy Times," a newspaper printed and in gener*la* circulation in said Lee county, for four successive weeks previous to the day of sale, as by the terms of said decree I was ordered and directed to do, and on the twenty-seventh day of April, in the year A. D. 1860, in further compliance with the terms of said decree, at the north door of the court-house, in the city of Dixon, in said county, I did sell, at public vendue, to Jonas Ely and Daniel Throckmorton, who were the highest and best bidders, the said mortgaged premises in said decree and advertisement mentioned, for the sum of eight hundred and thirty dollars, to wit, the one equal undivided two-thirds of the southwest quarter of section No. twelve (12), in township No. twenty (20) north, range No. ten (10) east, of the fourth principal meridian, containing one hundred and fifty acres, more or less, for the sum of eight hundred dollars, and the remaining
363 portion of said mortgaged premises hereinafter described for the sum of thirty dollars:

day of December in said year, in a certain suit, then pending in said court on the chancery side thereof, to foreclose a mortgage, wherein Jonas Ely and Daniel Throckmorton were complainants and Ruggles W. Clapp, Emily Clapp, and Cyrus Craig were defendants, the said court did make the following order and decree, to wit:

"It is ordered, adjudged, and decreed by the court that the said defendants pay to the said complainants the said sum of one thousand nine hundred and sixty-six dollars and $\frac{68}{100}$ *cents*, with interest thereon from the first day of December, A. D. 1859, on or before the fifteenth day of January, A. D. 1860, together with their costs and c-arges by them in this behalf expended, and that in default thereof the said Ruggles W. Clapp, Emily Clapp, and Cyrus Craig and all persons claiming or to claim the same be foreclosed from all equity of redemption and claim of, in, and to the said mortgaged premises and every part and parcel thereof; and that the said defendants deliver over to the said complainant all deeds, demises, and writings relating to or concerning the same, and that all and singular the said premises be sold, and that Charles N. Levanway, one of the masters in chancery of this court, be, and he is hereby, ordered
362 to sell the same, and that the same be sold at the door of the court-house, in Dixon, in Lee county, aforesaid; that said master give four weeks' notice of the time and place '*place*' of such sale by advertising in a newspaper in said Lee county, and that out of the proceeds of such sale the said complainants be paid the sum of one thousand nine hundred and sixty-six dollars and sixty-eight cents, with interest thereon until the time of such sale, together with their costs and charges, and that the said master make, execute, and deliver to the purchaser or purchasers of said premises certificates of purchase therefor, and that he report his actings and doings in the premises to this court;"

And whereas the said defendants failed to pay the said several sums in said decree and order specified at the time and in the manner specified; and whereas, on default being made as aforesaid, I, Charles N. Levanway, master in chancery of said Lee county, did first give public notice of said sale by the publication of an advertisement in the "Amboy Times," a newspaper printed and in gener*la* circulation in said Lee county, for four successive weeks previous to the day of sale, as by the terms of said decree I was ordered and directed to do, and on the twenty-seventh day of April, in the year A. D. 1860, in further compliance with the terms of said decree, at the north door of the court-house, in the city of Dixon, in said county, I did sell, at public vendue, to Jonas Ely and Daniel Throckmorton, who were the highest and best bidders, the said mortgaged premises in said decree and advertisement mentioned, for the sum of eight hundred and thirty dollars, to wit, the one equal undivided two-thirds of the southwest quarter of section No. twelve (12), in township No. twenty (20) north, range No. ten (10) east, of the fourth principal meridian, containing one hundred and fifty acres, more or less, for the sum of eight hundred dollars, and the remaining
363 portion of said mortgaged premises hereinafter described for the sum of thirty dollars:

Now, therefore, in consideration of the premises and of the sum of eight hundred and thirty dollars, paid me by the said Jonas Ely and Daniel Throckmorton, I, Charles N. Levanway, master in chancery as aforesaid, and in said capacity, do hereby grant, sell, and convey unto the said Jonas Ely and the said Daniel Trockmorton the mortgaged premises in said decree and advertisement mentioned and described; which premises are described as follows, to wit:

One equal undivided two-thirds of the southwest quarter of section No. twelve (12), in township No. twenty (20) north, of range No. ten (10) east, fourth principal meridian, containing one hundred and fifty acres, more or less; also an equal undivided two-thirds of a part of section No. twenty-five (25), township No. twenty (20) north, of range No. ten (10) east, of the fourth principal meridian, and further described, to wit: Commencing at the southwest corner of the northeast quarter of the southwest quarter of section No. twenty-five (25), thence north forty rods, thence east twenty rods, thence south forty rods, thence west twenty rods to the place of beginning, containing five acres, more or less; all of which said premises — situated in the county of Lee and State of Illinois; to have and to hold the aforementioned premises, with all the privileges and appurtenances thereunto belonging, unto them, the said Jonas Ely and Daniel Throckmorton, their heirs and assigns forever.

In testimony whereof I, the said Charles N. Levanway, in my capacity aforesaid of master in chancery "*chancery*," have hereunto set my hand and seal this second day of September, A. D. 1861.

CHARLES N. LEVANWAY,
Master in Chancery in and for Lee County.

364 STATE OF ILLINOIS, } ss:
Lee County, }

I, Benjamin F. Shaw, clerk of the circuit court and *ex officio* recorder in and for the county of Lee and State of Illinois, do hereby certify that before me personally came Charles N. Levanway, known to me to be the person mentioned in and who executed the foregoing deed, and acknowledged that he executed the same, as master in chancery, for the uses and purposes therein set forth.

Given under my hand and seal of said court this 2rd day [SEAL.] of September, A. D. 1861.

BENJ. F. SHAW, *Clerk*,
By L. A. DIVINE, *Deputy*.

Filed Aug. 2rd, 1870, at 2 o'c. p. m.

STATE OF ILLINOIS, } ss:
Lee County, }

I, Ira W. Lewis, clerk of the circuit court and *ex officio* recorder in and for said county, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of master's deed filed for record in the recorder's office of said Lee county on the 2d day of August,

A. D. 1870, and duly recorded in vol. 20 of Deeds, at page 129 thereof, as appears from the records of my office.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at my office, in Dixon, Ills., this 18th day of July, A. D. 1883.

IRA W. LEWIS, *Clerk.*

365 "EXHIBIT G."

Edwin W. McLean to Cephas Clapp. } War-anty Deed.

This indenture, made this twelfth day of March, in the year of our Lord one t-ousand eight hundred and sixty-eight, between Edwin W. McLean and Julia H. McLean, his wife, of Great Barrington, State of Massachusetts, party of the first part, and Cephas Clapp, of Lee Center, Lee county, State of Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of eight hundred and fifty dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged ther-from, has granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents does grant, bargain, sell, remise, release, convey, alien, and confirm, unto the said party of the second part and to his heirs and assigns forever all the following-described lot, piece, or parcel of land, situate in the county of Lee and State of Illinois and known and described as follows, to wit:

The undivided one-third of the southwest quarter of section twelve (12), town. twenty (20), range ten (10) east, of the fourth principal meridian, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or in equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to

366 hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever; and the said Edwin W. McLean and Julia H. McLean, his wife, parties of the first part, for their heirs, executors, and administrators ,do*es* covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents that they are well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law in fee simple, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all

former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever, and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every other person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warant and forever defend, except what taxes may have been levied since April, eighteen hundred and sixty-five, it having been agreed that Cephas Clapp, party of the second part, should pay all taxes levied since April, A. D. 1866.

In witness whereof the said party of the first part have hereunto set their hand- and seal- the day and year first above written.

EDWIN W. McLEAN. [SEAL.]
JULIA H. McLEAN. [SEAL.]

Signed, sealed, and delivered in presence of—
L. W. PARTRIDGE.

STATE OF MASSACHUSETTS, } ss:
Berkshire County, }

367 I, Isaac Seeley, a notary public in and for said county, in the State aforesaid, do hereby certify that Edwin W. McLean and Julia H. McLean, personally known to me to be the same persons whose names are subscribed to the foregoing warranty deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes ther-in set forth; and the said Julia H. McLean, wife of the said Edwin W. McLean, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower and all right, title, and interest to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so called, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this twenty-fourth [SEAL.] day of April, A. D. 1868.

ISAAC SEELEY,
Notary Public.

Filed for record June 8, 1868, a- 3 o'c. p. m.

STATE OF ILLINOIS, } ss:
Lee County, }

I, Ira W. Lewis, clerk of the Lee county circuit court and *ex officio* recorder in and for said Lee county, in the State aforesaid, and keeper of the records and seal of said court, do hereby certify that the foregoing is a true and correct copy of an instrument of writing filed

for record in the recorder's office of said county on the eighth day of June, A. D. 1868, and duly recorded in Book 16 of Deeds, at page 257 thereof, as appears from the records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 28th day of June, A. D. 1883.

[SEAL.] IRA W. LEWIS, *Clerk.*

368 "EXHIBIT H."

Ruggles W. Clapp *et al.* to William E. Ives. } Warranty Deed.

This indenture, made this sixteenth day of Feb-uary, in the year of our Lord one thousand eight hundred and fifty-eight, between Ruggles W. Clapp and Emily Clapp, his wife, of the county of Lee and State of Illinois, parties of the first part, and William E. Ives, of the same place, party of the second part, witnesseth:

That the said parties of the first part, for and in conside-ation of the sum of three thousand dollars paid by the said party of the second part, the receipt of which is hereby acknowledged, doth by these presents grant, bargain, and sell unto the said party of the second part, his heirs and assigns, the following-described tract or parcel of land, situated in the county of Lee and State of Illinois, to wit:

Lots No. two, three, and six (2, 3, and 6), in block No. twenty-five (25), in Wyman's Addition to the original town of Amboy, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining:

To have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever; and the said parties of the first part, for themselves and their heirs, executors, and administrators, do hereby covenant to and with the said party of the second part, his heirs and assigns, they are well seized of the premises above conveyed as of good and indefeasible estate in fee simple, and have good right to sell and convey the same in manner and form as aforesaid; that they are free from all incumbrances, and that the above-bar-
369 gained premises in the quiet and peaceable possession of the said party of the second part, his heirs or assigns, against the claim of all persons whomsoever they will warrant and forever defend.

Possession to be given on the first of April next.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

RUGGLES W. CLAPP. [SEAL.]
EMILY CLAPP. [SEAL.]

Signed, sealed, and delivered in presence of—
H. S. PERRY.

STATE OF ILLINOIS, } ss:
County of Lee, }

On this sixteenth day of February, 1858, personally appeared before me, Hiram S. Perry, a notary public in and for said county, Ruggles W. Clapp, to me personally known to be the person whose name is subscribed to the above deed as having executed the same, and acknowledged that he had freely executed the same for the uses and purposes therein expressed; and Emily Clapp, wife of the said Ruggles W. Clapp, to me personally known to be the person whose name is subscribed to the same deed, also appeared before me and was by me made acquainted with the contents of the same and examined separate and apart from her said husband whether she executed the said deed and relinquished her dower to the lands and tenements therein mentioned voluntarily, freely, and without compulsion of her said husband, and acknowledged that she executed the same and relinquished her dower to the lands and tenements therein mentioned freely and without the compulsion of her said husband.

Given under my hand and seal the day and year aforesaid.

HIRAM S. PERRY,
Notary Public.

Filed for record Feb'y 18th, A. D. 1858, at 9 o'c. a. m.

370 STATE OF ILLINOIS, } ss:
Lee County, }

I, Ira W. Lewis, clerk of the circuit court and *ex officio* recorder in and for said Lee county, in the State aforesaid, and keeper of the records and seal of said court, do hereby certify that the foregoing is a true and correct copy of an instrument of writing filed for record in the recorder's office of said county on the eighteenth day of February, A. D. 1858, and duly recorded in Book T of Deeds, on page 145 thereof, as appears from the records of my office.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court this 28th day of June, A. D. 1883.

IRA W. LEWIS, *Clerk.*

371 EXHIBIT "I."

STATE OF ILLINOIS, } ss:
Lee County, }

The people of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon Ruggles W. Clapp, if he shall be found in your county, personally to be and appear before the circuit court of said county on the first day of the next term thereof, to be holden at the court-house, in Dixon, in said county, on the 3rd Monday of June next, to answer unto a certain bill of complaint filed in our said court, on the chancery side thereof, by Edwin

McLean, complainant herein, and further to do and perform whatever our said court shall then and there determine or decree in this behalf.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness George E. Haskell, clerk of our said court, and the seal thereof, at Dixon aforesaid, this 30th day of May, A. D. 1857.

[SEAL.] GEO. E. HASKELL, *Clerk*.
By JOSEPH BALL, *Deputy*.

Endorsed as follows: Summons. E. McLean *vs.* R. W. Clapp. June term, 1857.

And further endorsed as follows: I have executed the within by reading the same in presence and hearing of Ruggles W. Clapp and leaving him a copy of the same June 1st, 1857. 13 miles' travel, 65 ct.; service, 50; return, 10—$1.25. Ozius Wheeler, sheriff, by E. F. Baker, deputy.

372 And further endorsed as follows: Filed June 13, 1857. Geo. E. Haskell, clerk, per Joseph Ball, depu*rt*.

STATE OF ILLINOIS, } ss:
Lee County, }

I, Ira W. Lewis, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of a summons now on file in my office, dated May 30th, 1857, in the matter of Edwin W. McLean *vs.* Ruggles W. Clapp.

In witness whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court this 18th day of July, A. D. 1883.

IRA W. LEWIS, *Clerk*.

EXHIBIT "K."

EDWIN W. MCLEAN } Bill to Foreclose Mortgage.
v.
RUGGLES W. CLAPP. }

On this day comes the complainant, by Ives, his solicitor, and, on his motion, this suit is dismissed without prejudice.

It is therefore by the court ordered that the said complainant pay the costs of this suit.

STATE OF ILLINOIS, } ss:
Lee County, }

I, Ira W. Lewis, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify that the foregoing
373 is a true and correct copy of the order of dismissal entered of record at the June term, 1857, of the circuit court of said Lee Co., in a certain cause then pending in said court, wherein Edwin

W. McLean was complainant and Ruggles W. Clapp was defendant, which order is entered in Chancery Record "A," page 127 thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 18th day of July, A. D. 1883.

[SEAL.] IRA W. LEWIS, *Clerk.*

374 FEBRUARY FIFTEENTH, A. D. 1886.

The complainants called as a witness WILLIAM FLATT, who, first being duly sworn, testified as follows in answer to the interrogatories of A. C. BARDWELL, Esq., attorney for complainants:

1. What is your name, occupation, age, and residence?

Ans. My name is William Flatt; occupation, a farmer; place of residence, Amboy, Illinois; age, forty-two years.

2. Are you acquainted with the parties to this suit; if so, how long have you known them respectively?

Ans. Well, I am not acquainted with any of them except W. E. Ives, of Amboy.

3. Are you acquainted with Martin L. Arnold, of the town of Amboy, in said Lee county; if so, how long have you known him?

Ans. I am acquainted with Martin L. Arnold; I've known him for at least the last twenty years.

4. How near to him have you resided during any portion of that time?

Ans. Do you mean how near the houses were together? Father's farm and his joined.

5. How long have you lived on the farm adjoining said Arnold?

Ans. Ten years or more.

6. Do you still reside on the same farm and does said Arnold still reside on the farm adjoining yours?

Ans. I do not reside on the same farm.

7. How near to Arnold's house do you now live?

Ans. I can't tell exactly; somewheres between a mile or a mile and a half.

8. Are you acquainted with the general reputation for truth and veracity of the said Martin L. Arnold in the community where he lives?

Ans. Yes.

9. What is that reputation, good or bad?

Ans. Good.

10. Are you acquainted with a lot in the city of Amboy
375 described as the east eighteen feet of the west thirty-one feet of lot five, block eleven, and commonly known as the Market lot?

Ans. No, sir; I am not.

11. Are you acquainted with a lot in said city of Amboy on which Keefer and Livy kept a meat market in 1857, '8, or '9?

Ans. Well, sir, I can't tell.

Cross-examination by S. H. BETHEA, counsel for defendants:

1. What do you mean by general reputation?

Ans. Well, I mean a man's standing in the community where he lives.

2. Do you mean what you know of him yourself or what people say about him?

Ans. What I know of him myself.

3. And not what people say about him?

Ans. I should be governed in regard to that in some extent.

4. Did you ever hear anybody say that Arnold was a truthful man?

Ans. I don't know that I ever asked the question.

5. You don't remember, then, of hearing any one say that he was truthful?

Ans. No, sir.

WILLIAM FLATT.

Subscribed and sworn to before me this eighteenth day of May, A. D. 1886.

JAMES F. SANDFORD,
Special Examiner.

376 Complainants also called as a witness CHAUNCY D. SEARS, who, first being duly sworn, testified as follows in answer to the direct interrogatories of Mr. A. C. BARDWELL:

1. What is your name, age, occupation, and place of residence?

Ans. My name is Chauncy D. Sears; age, 55; Amboy; carpenter and joiner.

2. How long have you resided in said city of Amboy?

Ans. Thirty-one years, I believe.

3. Are you acquainted with the property in said city of Amboy described as the east eighteen feet of the west thirty-one feet of lot five, block *block* eleven, and commonly known as "Market lot"?

Ans. I am.

4. Do you remember on or about what year the building on said lot was destroyed by fire? If so, state the year near as you can.

Ans. My opinion is that it was in '64 or '5, somewhere along there, to the best of my judgment.

5. What, in your opinion, was the market value in 1860 of this Market lot with the building then standing on it?

Ans. I should say that it would be worth about three hundred and fifty dollars at that time.

6. Describe as nearly as you can the building then standing on this lot.

Ans. You mean the size of it?

7. I mean as to the material of which it was built, and whether thoroughly or poorly constructed, and its condition at that time, 1860.

Ans. It was a cheap-built building and out of good repair at that time.

8. In 1860 & since then have you owned real estate in said city of Amboy?

Ans. Yes, sir.

Cross-examination by Mr. BETHEA:

Q. When did you fix a price in your mind on this lot?

Ans. I can't hardly tell. I've been assessor's collector on
377 everything else there, and this, I think, is the first time I've thought of it since I was assessor; was talking to Mr. Arnold.

Q. When was that?

A. I think it was a month, six weeks, or two months ago.

Q. When was it worth the amount you had fixed?

A. Well, I should judge it was in sixty-four or five.

Q. You look back and fix its value at that time?

A. Yes, sir; it was just before the fire we had there.

Q. Can you remember now distinctly as to what that property would be worth then?

A. I could not distinctly.

Q. You might be mistaken?

A. Yes, sir.

Q. Property was worth more then than now in Amboy?

A. Not at that time.

Q. Was it not in sixty-four or five, at the end of the war?

A. I think not in this. Property was pretty low then for a little while.

Q. Sixty-four or five?

A. Yes, sir.

Q. How much was the most that property was worth in Amboy, that same lot?

A. In the early commencement of Amboy I presume it was worth nearly double, because all those corner lots and such things, flatward pieces, everybody wanted to get onto them.

Q. How much is that lot worth now?

A. With improvements on it?

Q. No.

A. Just the naked lot?

Q. Yes, sir.

A. I don't know. I should think it would be worth five or six hundred dollars.

Q. What improvements are on it now?

A. Got a brick building on it.

Q. How much is it worth?

A. I think it cost five hundred dollars when it was put on. I heard about it at the time.

378 Q. That would make the lot as it stands worth a thousand or twelve hundred dollars?

A. Yes, sir; about that, I guess.

Q. Was not the lot in sixty-four or five, with building on it, worth as much then as the present building is?

A. No, sir.

Q. How much does that house and property there rent for now?

A. The proprietor—parties that own it——

Q. What is its rental value, do you suppose?

A. If I am not mistaken, I think it was—would rent for 20 or 24.

Q. A month?
A. Yes, sir.
Q. What was its rental value in sixty-four or five, just before it was burned down?
A. It was a very little, poor building on it, you know—little wood building.
Q. Would it not rent for as much as the present building?
A. No, sir.
Q. Why not?
A. Because it was not as large and not as nice.
Q. The location was the same—just as desirable as now?
A. Yes, sir; but they use it for a different purpose.
Q. How long since you have been assessor?
A. If I recollect right, it has not been since sixty-eight. I was assessor three times.
Q. Do you know Martin L. Arnold?
A. Yes, sir.
Q. How long have you known him?
A. I've known him about thirty years.
Q. Was your acquaintance very intimate with him?
A. Not very.
Q. Are you very friendly towards him?
A. Not over and above.
Q. Speaking terms—are you on friendly terms?
A. Yes, sir.
Q. Anything in your relations with him cause you to be interested in this case at all?
379 A. Not at all. In fact, I didn't know he was coming here at all. I had some business with Mr. Smith and come up here to see him. I came voluntarily, without any subpœna.
Q. Do you think that other people in Amboy who are judges of property would coincide in your views as to the value of this property for sixty-four or five?
A. Indeed, I could not tell you. I presume there are some that would come pretty near that. It is quite a long while ago.
Q. You are apt to be mistaken about it, are you not?
A. No, sir; I may not give it as accurately as my impression.
Q. That is your impression now—the best you can do in figuring it over since you have thought about it to-day?
A. Yes, sir.
Q. And if you have got the wrong year it might make a great difference as to its value—along about the middle of the war or the end of the war?
A. It is my impression it was sixty-four or five that—I don't think it was just before the fire, I know. This was in sixty-five, if I am not mistaken.
Q. What was just before the fire?
A. I was thinking I got that wrong. The statement was wrong. The fire was about sixty-five, if I remember right.
Q. Suppose the fire was two years before or two years after, wouldn't that make a difference as to the value of the property?

Cross-examination by Mr. BETHEA:

Q. When did you fix a price in your mind on this lot?

Ans. I can't hardly tell. I've been assessor's collector on
377 everything else there, and this, I think, is the first time I've thought of it since I was assessor; was talking to Mr. Arnold.

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Q. You might be mistaken?

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Q. No.

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Q. What is its rental value, do you suppose?

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Q. Would it not rent for as much as the present building?
A. No, sir.
Q. Why not?
A. Because it was not as large and not as nice.
Q. The location was the same—just as desirable as now?
A. Yes, sir; but they use it for a different purpose.
Q. How long since you have been assessor?
A. If I recollect right, it has not been since sixty-eight. I was assessor three times.
Q. Do you know Martin L. Arnold?
A. Yes, sir.
Q. How long have you known him?
A. I've known him about thirty years.
Q. Was your acquaintance very intimate with him?
A. Not very.
Q. Are you very friendly towards him?
A. Not over and above.
Q. Speaking terms—are you on friendly terms?
A. Yes, sir.
Q. Anything in your relations with him cause you to be interested in this case at all?
379 A. Not at all. In fact, I didn't know he was coming here at all. I had some business with Mr. Smith and come up here to see him. I came voluntarily, without any subpœna.
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Q. You are apt to be mistaken about it, are you not?
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Q. That is your impression now—the best you can do in figuring it over since you have thought about it to-day?
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Q. And if you have got the wrong year it might make a great difference as to its value—along about the middle of the war or the end of the war?
A. It is my impression it was sixty-four or five that—I don't think it was just before the fire, I know. This was in sixty-five, if I am not mistaken.
Q. What was just before the fire?
A. I was thinking I got that wrong. The statement was wrong. The fire was about sixty-five, if I remember right.
Q. Suppose the fire was two years before or two years after, wouldn't that make a difference as to the value of the property?

A. If it was two years after I should think it would.
Q. Would be worth more?
A. Yes, sir.
Q. How much more would it be worth if it was two years after?
A. That would be a pretty hard estimate, so long ago. I know property went up a little.
Q. Are you dealing in real estate?
A. No, sir.
Q. What is your business?
A. Housebuilder, carpenter, and joiner.
Q. How much real estate do you own in Amboy?
380 A. I've only got three lots.
Q. How much real estate do you own in any other place?
A. I don't own any now. I have owned two farms there.
Q. When did you own a farm there?
A. That was in 1863.
Q. Sold it then, did you?
A. Yes, sir.
Q. How long a time did you own it?
A. Six years, I think.
Q. How much of a farm was it?
A. Small one of 50 acres.
Q. Whereabouts was it?
A. North of the cemet-ry.

Redirect examination:

Mr. BARDWELL: In what years were you collector and assessor respectively?
A. I could not answer that correctly, but it is——

Mr. BETHEA: I object to this as not proper redirect.

Mr. BARDWELL: State as nearly as you can.
A. I think the last I was assessor was in 1868, but I am not positive. It is thereabouts.
Q. On what year were you first assessor, as near as you can recollect?
A. It was the last year, if I am correct. I had it two years before.
Q. In my direct examination I asked you for the value of this property in the year of 1860. State now whether your answer to that question in your direct examination was as you intended it to be or not. There seems to have been some misapprehension as to the date. I merely wish that you shall understand it.
A. I didn't understand that question exactly; at least, I intended to have said—I don't know but I made a mistake—I intended to have said in 1864. If you asked me that question I really didn't understand it that way.
Q. State now your opinion as to the market value of that property in 1860.

Mr. BETHEA: I object, as that is not proper redirect, and it
381 does not appear that he knew in 1860.

A. Well, I should think it was worth as much at that time; in fact, that was somewhere along about the years when property was running so low; pretty hard question for me to answer just correctly.

Recross-examination:

Mr. BETHEA: When did you go to Amboy, Mr. Sears?
A. In the fall of '54.
Q. You were there in the year 1860?
A. Yes, sir.
Q. Do you pretend to know the market value of land there in 1860?
A. No; I don't pretend to.

Second redirect examination:

Mr. BARDWELL: You are acquainted with the value of property down in Amboy in 1860, are you not?

Mr. BETHEA: I object as not proper redirect and as leading.

A. Yes, sir; but, as I said before, I can't give it to you exactly, perhaps, as it should be, the value of it at that time, because it is something which has been out of my mind some time. I have dealt considerably in lots—traded and bought and sold—still I could not, without referring to books I have got, give you the value of such property. I know there was one while there along about 1860 when it was quite low. It was hard work to sell a lot—business lot.

CHAUNCY D. SEARS.

Subscribed and sworn to before me this sixth day of July, A. D. 1886.

JAMES F. SANDFORD,
Special Examiner.

382 FEBRUARY 17TH, 1886.

Complainants introduced WASHINGTON I. FISH, who, being duly sworn, testified as follows:

Q. What is your name?
A. Washington I. Fish.
Q. What is your age, occupation, and place of residence?
A. Fifty-two; I am running a feed mill at present; Amboy.
Q. Are you acquainted with the parties to this suit; if so, with what ones, and how long have you known them respectively?
A. Well, I am acquainted with Henry Clapp, of course. I am not particularly acquainted with Mrs. Chadwick; have seen her to talk with her. Wm. E. Ives—I am acquainted with him.
Q. How long have you been acquainted with Henry Clapp?
A. I think from about 1865 or '6; somewhere along there.
Q. Can you state what his financial circumstances and condition was from 1866 to 1870?

Objected to by Mr. Bethea as not proper in rebuttal and because sufficient ground has not been laid for the question.

A. If it was two years after I should think it would.
Q. Would be worth more?
A. Yes, sir.
Q. How much more would it be worth if it was two years after?
A. That would be a pretty hard estimate, so long ago. I know property went up a little.
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A. It was the last year, if I am correct. I had it two years before.
Q. In my direct examination I asked you for the value of this property in the year of 1860. State now whether your answer to that question in your direct examination was as you intended it to be or not. There seems to have been some misapprehension as to the date. I merely wish that you shall understand it.
A. I didn't understand that question exactly; at least, I intended to have said—I don't know but I made a mistake—I intended to have said in 1864. If you asked me that question I really didn't understand it that way.
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381 does not appear that he knew in 1860.

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Recross-examination:

Mr. BETHEA: When did you go to Amboy, Mr. Sears?
A. In the fall of '54.
Q. You were there in the year 1860?
A. Yes, sir.
Q. Do you pretend to know the market value of land there in 1860?
A. No; I don't pretend to.

Second redirect examination:

Mr. BARDWELL: You are acquainted with the value of property down in Amboy in 1860, are you not?

Mr. BETHEA: I object as not proper redirect and as leading.

A. Yes, sir; but, as I said before, I can't give it to you exactly, perhaps, as it should be, the value of it at that time, because it is something which has been out of my mind some time. I have dealt considerably in lots—traded and bought and sold—still I could not, without referring to books I have got, give you the value of such property. I know there was one while there along about 1860 when it was quite low. It was hard work to sell a lot—business lot.

CHAUNCY D. SEARS.

Subscribed and sworn to before me this sixth day of July, A. D. 1886.

JAMES F. SANDFORD,
Special Examiner.

382 FEBRUARY 17TH, 1886.

Complainants introduced WASHINGTON I. FISH, who, being duly sworn, testified as follows:

Q. What is your name?
A. Washington I. Fish.
Q. What is your age, occupation, and place of residence?
A. Fifty-two; I am running a feed mill at present; Amboy.
Q. Are you acquainted with the parties to this suit; if so, with what ones, and how long have you known them respectively?
A. Well, I am acquainted with Henry Clapp, of course. I am not particularly acquainted with Mrs. Chadwick; have seen her to talk with her. Wm. E. Ives—I am acquainted with him.
Q. How long have you been acquainted with Henry Clapp?
A. I think from about 1865 or '6; somewhere along there.
Q. Can you state what his financial circumstances and condition was from 1866 to 1870?

Objected to by Mr. Bethea as not proper in rebuttal and because sufficient ground has not been laid for the question.

A. I considered him in bad shape; didn't pretend to pay his debts that he contracted.

Q. In what business were you engaged from 1866 to 1870?

A. Manufacturing plows.

Q. At what place?

A. Binghampton, near Amboy..

Q. Did you have any deal with Mr. Henry Clapp from 1866 to 1870?

A. Yes, sir.

Q. What do you mean when you say that you considered him in bad condition?

A. Why I mean that he never would pay any debt that he contracted and very hard to get it from him if he could possibly avoid it in any shape.

Q. State for what years or time you considered him to have been in that condition.

Same objection by Mr. Bethea.

383 A. Well, I considered him so from 1-66; always have considered him so.

Mr. Bethea objects to the last sentence.

Q. Do you know of other parties than yourself having deal or business with him from 1866 to 1870?

Mr. Bethea makes the same objection.

A. Not from my own knowledge; only from hearsay.

Q. Do you know from hearsay whether such other parties had or not that difficulty with him in collecting bills or claims against him?

Mr. Bethea makes the same objection, and because it calls for hearsay testimony.

A. Yes, sir; I do.

Q. If you have heard any of the parties who held such claims or bills against him speak on the subject you may say whether or not they stated that they had difficulty in collecting bills of him.

Mr. Bethea makes the same objection.

A. Yes, sir; haven't got it to-day, I guess, yet.

Q. Do you know of other cases than your own in which the parties whom he was owing have stated that they were unable to collect their bills of him?

Mr. Bethea makes the same objection.

A. I do.

Q. How many persons do you know of?

Mr. Bethea makes the same objection.

A. Oh, I could not tell. Two or three I have heard speak of it; have not heard so much about him of late years.

Q. Are you acquainted with Martin L. Arnold, of Amboy?
A. I am.
Q. How long have you known him?
A. About twenty years.
Q. How near to him have you resided?
384 A. Part of the time within a mile and part of the time within a half a mile.
Q. Are you acquainted with his general reputation for truth and veracity in the community in which he lives?

Mr. Bethea objects.

A. I am.
Q. What is that reputation—good or bad?
A. Good.

Cross-examination by Mr. BETHEA:

—. You live in Binghampton now, do you?
A. Yes, sir.
Q. How long have you lived there?
A. Going on twenty-two years.
Q. Are you any relation to Martin L. Arnold?
A. Not that I know of.
Q. Are you connected with him in business in any way or have you been?
A. I am not.
Q. How did you happen to come here to testify for him?
A. I was subpœnaed.
Q. When?
A. To-day; this forenoon.
Q. By whom?
A. By Martin L. Arnold.
Q. Did he tell you what he wanted of you?
A. He did.
Q. Did you tell him what you could swear to?
A. I did not.
Q. Did he ask you what you could swear to?
A. He did not.
Q. Did you know what you were expected to swear to when you came here?
A. I did.
Q. How did you learn it?
A. Well, sir, we talked this matter over a great many times.
Q. Who do you mean by we?
A. Well, Mr. Arnold and other neighbors talked about it.
Q. About what?
A. About this McLean mortgage, Martin's reputation, etc.
Q. How did you happen to do that?
A. Well, I couldn't tell you. He comes in my place quite often.
Q. How far does he live from your place of business?
A. I think about a half a mile, I should judge; it may be a little farther.

Q. He has come in there quite often, has he?

384½ A. Probably on an average of once a week.

Q. And he talked about this McLean mortgage?

A. Not always; occasionally he did.

Q. And about his litigation?

A. Sometimes I would ask him how he was getting along with it.

Q. Are you and he pretty good friends?

A. Why, we have always been friendly; not anything particular more than anybody else that I know of.

Q. Does he owe you anything?

Mr. Bardwell objects as incompetent.

A. Well, we have not settled up lately. I can't tell you how we do stand.

Q. How long has he owed you?

Mr. Bardwell objects that the witness has stated he does not know how their account stands.

A. We have a deal back and forth for the last fifteen years; I presume as much as that.

Q. When did you last settle?

A. I think we never had a real settlement to my knowledge; we have talked it over a number of times.

Q. When did he last pay you?

A. Paid me some last week—I think it was last week; let me have some hay.

Q. When did he pay you last before?

A. I think the week before.

Q. What did he pay you then?

A. Hay.

Q. When did he last pay you any money?

A. I can't remember.

Q. Did he ever pay you any money?

A. Yes, sir; he has paid me some.

Q. You feel somewhat interested, do you not, in his recovering something from this Chadwick property?

A. I don't know that I do.

Q. If he recovers something from this property you will be in a better condition to colleet what he owes you, will you not?

Mr. Bardwell objects, it not appearing that Arnold owes the witness anything.

A. There is no doubt but what I would, if he was owing me.

Q. Have you any doubt at all, sir, as to his owing you?

385 A. Well, according to my books, of course, I think he is; how much I can't tell you. We have had an account back and forth. He let me have hay a number of times for fifteen years.

Q. Did you ever loan him any money?

A. I don't know that I ever did.

Q. How many transactions of business have you ever had with Henry Clapp?

A. Just the number I couldn't say. I have repaired plows for him and sold him new plows and lent him some money.

Q. How much does it all amount to?

A. It might amount to forty or fifty dollars; I don't know.

Q. You don't know about his financial condition of your own knowledge, except from your own business with him, do you?

A. No; not from my own knowledge, of course.

Q. Didn't he dispute your account for some reason?

A. Never to my knowledge.

Q. Didn't he claim that he had paid you in one way?

A. Never, to my knowledge.

Q. Or that for some reason or other he was not bound to pay you?

A. I never heard of it.

Q. During a portion of the time he lived upon and owned 480 acres of land in Bradford, did he not?

A. He lived on the farm there in Bradford.

Q. And so far as you know he owned it?

A. Yes, sir.

Q. You can't say that your debt could not have been collected from him, can you, before he sold his farm?

A. I never sued Mr. Clapp; never tried to force it.

Q. And therefore you don't know but what it could have been collected at that time?

A. It might have been.

Q. What do you mean by general reputation for truth and veracity?

386 A. Mean? Speak to people in regard to a man's reputation.

Q. You mean what the people say about him as to his truthfulness?

A. Yes, sir.

Q. How many people have you ever heard talk about Arnold's reputation for truth?

A. Why, I have heard one or two.

Q. Is that all?

A. I think so; I don't remember of anybody in particular now.

Q. When?

A. Well, I heard more said about the time that Martin was having trouble with the Wilcox estate.

Q. What was the occasion?

A. There was considerable talk about a receipt that Martin held, given by Mr. Wilcox, and of course considerable talk at that time.

Q. What was the claim about the receipt?

A. I think the estate wanted to make out that the receipt was gotten up by Martin himself.

Q. Didn't they so make it out?

Mr. Bardwell objects to this as being incompetent and calling for the guess-work of the witness.

A. I was not present; I could not tell you.

Q. Didn't you hear that Mr. Arnold failed to collect or to — in his defense against a claim brought by the estate?

Mr. Bardwell objects as incompetent.

A. If I remember, I think the case went against him.

Q. And the result of the verdict against him was that he was guilty of forgery, was it not, as you understood it?

Mr. Bardwell objects as incompetent, irrelevant, and impertinent.

A. I could not tell you just exactly.

Q. Didn't you hear anybody say that was the result of the suit?

Mr BARDWELL: Same objection.

A. I could not tell you that I did; I don't remember; it was four or five years ago.

387 Q. When Mr. Wilcox died there was a note and mortgage found among his papers against Martin L. Arnold and his land, and Mr. Arnold produced a receipt claiming that it was against that mortgage or note, did he not, and a trial was had upon the question and a judgment was found against Arnold?

Mr. Bardwell objects as being a manifest effort on the part of counsel to introduce on the examination of this witness matters which can only be proved by record evidence, and as to which the witness has stated that he has no knowledge.

A. I don't know how it came out; I could not answer it from my own knowledge.

Q. Didn't you hear that that was true?

Mr. BARDWELL: Same objection.

A. I think that I heard the case went against Martin.

Q. Were you a witness in that case?

A. I was not.

Q. Didn't you hear at that time that witnesses were introduced swearing that they would not believe Arnold under oath, or that his reputation for truth was bad?

Mr. BARDWELL: I object to that on the ground that the a-sumption on which the question is based is false and unwarranted.

A. I believe I did hear that Henry Adams came up here and swore that he would not believe him under oath, and that his reputation was bad. Not knowing personally myself, don't know anything about it.

Q. Didn't you hear that a great many other citizens of Amboy so swore?

Mr. BARDWELL: I make the same objection.

A. I might have heard that there was one or two; can't remember now.

Q. Didn't you hear that there were at least a dozen of the best citizens of Amboy and neighbors of Arnold that so swore?

388 Mr. BARDWELL: I make the same objection; and counsel for complainants being advised that in the case referred to

there was not a single witness swore as to the reputation of Martin L. Arnold for truth and veracity.

Mr. Bethea objects to counsel's objection because it is not proper for him to state what he is advised, and that if it is his advice was from his client Arnold, and that its source is not a good one, and he has been by his client misinformed upon the subject-matter. Counsel further states that it is his best recollection that at least a dozen witnesses were introduced in that case testifying that Arnold's reputation for truth was bad.

Mr. Bardwell says that this witness' manifest effort to produce their rights in this case is based on what he believes to be false, and he calls upon the counsel upon the other side to introduce the only proper evidence on the question as to the impeachment of said Arnold in the Wilcox case, viz., the records in that case.

Mr. BETHEA: That there is no record of the evidence in the case. It was not preserved, as the case was not taken up, as the counsel recollects.

Mr. Bardwell reminds the counsel for defense that the Wilcox case was a chancery suit; that the evidence was taken before the master, who was then his partner, and must therefore have been preserved.

WITNESS: I did not.

Q. They may have done so as far as you know.

A. They might, as far as I know.

Q. Who were the people that you talked with in reference to Arnold's reputation at the time of the Wilcox trial?

389 A. I couldn't answer that question. I think Henry Adams told me that he wouldn't believe Arnold under oath. I don't know when that was; don't know whether it was at that time or not.

Q. Who else did you talk with about it at that time?

A. I don't remember. I could not tell you.

Q. Then the only person that you remember talking about his reputation at that time said that he would not believe Arnold under oath?

A. I think that was his expression; think he swore to it. That is my impression. I was not present at the trial.

Q. What speech of the people do you, then, base your statement as to Arnold's reputation for truth?

A. Well, I never heard anything particular against him.

Q. You have told me, have not you, that all that you have heard was by this man Adams, who said he would not believe him under oath?

A. Yes, sir.

Q. And you have stated that you understand reputation to be what the people say about a man, and you have stated that all you have heard said was that he was not to be believed under oath. How can you, then, say that his reputation for truth is good?

A. I don't call one man the people. One man might say so.

Q. You hav'ne stated that an-body else stated anything about it, have you?

A. No, sir.

Q. His reputation must be good if you don't hear anything against him particularly. You never, then, have heard an-body say anything for him as to truth?

A. I don't know as I ever did; heard them speak of Martin as a man.

Q. Who else have you heard say that his reputation for truth was bad or that he was not truthful?

A. I co-ldn't tell you.

Q. You have heard others so state in substance that, haven't you?

A. I can't think of anybody I heard say Arnold's reputa-
390 tion was bad, excepting Henry Adams, and Adams lives next neighbor to me.

Q. Haven't you heard others say, whose names you don't remember, that Arnold was not truthful or to be relied upon in that particular or something in that respect?

A. I couldn't think of any one at present.

Q. Don't you think you have so heard without remembering their names, now?

A. I might have heard people speak of him. Most every one is talked about—all of us, pretty much.

Q. Have you ever been a witness for Arnold before in any litigation?

A. I think I never was, if I remember right.

Q. What other suits was Martin's reputation for truth called in question in?

Mr. Bardwell objects because it does not appear that it was called in question in an- suit and the witness has not stated that it has.

A. I don't know of any.

Q. Do you remember a suit between him and Cephas Clapp?

A. I think that Cephas Clapp told me that he had a case in Dixon with Martin.

Q. Do you remember that in that suit it was said that Mr. Clapp produced a great many witnesses, neighbors of Arnold, who testified that his reputation for truth was bad?

Mr. Bardwell objects as incompetent.

A. I don't.

Q. Didn't you hear that in that case John C. Cajobs, sup't of the Ill. Cent. R. R. Co.; John C. Church, cor-ner of the county; Josiah Little, banker in Amboy; Henry Hadger, postmaster at Amboy; Chaster Badger, and many other of the leading citizens of Amboy testified that Arnold's reputation for truth was bad?

Mr. BARDWELL: I object, the witness having already stated that he knew nothing about it.

A. No, sir; I don't know that I did.

391 Q. Do you know that you didn't?

A. Don't know that I heard anything about it in regard to his truth and veracity and reputation at that time.

Q. Will you swear, sir, that you didn't hear the question of his truthfulness discussed at that time?

A. I don't remember that I heard anything of it at that time.

Q. Did you hear of a case brought by Arnold against the Ill. Cent. R. R. Company a few years ago?

A. It seems as if I did or do, rather.

Q. Did you hear in that case the people I have named and others were subpœnaed to testify that Arnold's reputation for truth was bad?

Mr. Bardwell objected for the reason that in the case referred to no witnesses whatever were sworn.

A. I think there is a case, if I remember right, against the Ill. Cent. R. R. Co. brought by Arnold, but what it is about I don't know.

Q. Do you remember of the case of Edwin Clapp against Martin L. Arnold in the circuit court of this county?

A. No, sir.

Mr. BARDWELL: Objected to.

Q. Do you remember a case of Edwin Clapp against Lot Chadwick in this circuit court?

A. No; I do not.

Q. Do you remember about the litigation between the Clapps and Chadwick over this Clapp farm?

A. Yes; Fletcher Clapp and Chadwicks.

Q. Litigation before that in this court?

A. No.

Q. Did you know that in that case Martin L. Arnold was a witness; that in it a dozen of the best citizens of Amboy, neighbors of Arnold, including the names I have just mentioned to you, testified that Arnold's reputation for truth was bad, and that the judge deciding the case found against Arnold's testimony?

392 Mr. Bardwell objects because it is not true as a matter of fact that any witnesses were called in said case on the question of Mr. Arnold's reputation for truth and veracity, and that this effort to falsify the records is unfair to the witness and unfair to Mr. Arnold.

Mr. Bethea, counsel for defense, states that he believes that Arnold has told the complainants' counsel that no impeaching witnesses of Arnold were used in the case named, and that counsel may believe what Arnold told him; but defendants' counsel states as a fact that at least a dozen witnesses as heretofore named were used in that case for the purpose of impeaching Arnold; that they swore, as suggested, that Arnold's testimony was to the effect that Lot Chadwick had notice of the Edwin Clapp claim, which was the chief question in the case, and that the judge found that Arnold's testimony was not true.

Mr. Bardwell, counsel for complainants, states that he relies upon the records in said cause for anything he has said, and asks the coun-

sel for defense to introduce said record as the proper testimony on this question.

Mr. Bethea states that he was of counsel in that Edwin Clapp case; that the witnesses were introduced in open court, as heretofore stated; that as he now remembers no record of their evidence was kept.

Mr. Bardwell, counsel for complainant, can only say that he relies upon the certificate of evidence in the case signed by the judge as all and the only evidence in said case.

A. No, sir; I did not.

Q. Did you know or hear that upon at least three other lawsuits Arnold has had witnesses produced against him who testified that his reputation for truth was bad?

Mr. BARDWELL: Objected to; and defendants' counsel is
393 asked to name the cases referred to.

Mr. Bethea will do so, he states, in the proper time.

A. No; don't know anything about it; don't know that I ever heard anything about it.

Q. You have known, have you not, or heard that he has had considerable litigation within the last 15 years?

A. Heard he has had some lawsuits.

Q. Now, if you had heard that witnesses had sworn against his reputation for truth, as I have stated, could you have then sworn that his reputation for truth was good?

Mr. Bardwell objects as incompetent.

A. If I had heard so—let me see. Why, if it had been the general speech of the people that it was so I should have considered it bad.

Q. If the names of—if the man that I have named with other leading citizens of Amboy have sworn that it was bad in the number of cases I have suggested, could you then have sworn that his reputation was good if you had so known?

Mr. BARDWELL: Same objection.

A. If I should hear people generally speaking of it as bad, I should of course consider it bad.

Q. Answer the question; yes or no.

A. No; certainly.

Q. Now, isn't it true that for the last 15 years there has been a great deal of talk in Amboy as to Martin L. Arnold's truthfulness?

Mr. Bardwell objects, the witness having already answered the question, the ground having already been gone over.

A. I don't know that there has. There is lots of men that has talked, you know, feeling little ugly towards him or something of that kind.

Q. Isn't Arnold one of those men?

A. I don't understand you.

394 Q. You say there are lots of men that are talked about. Isn't Arnold one of those men?

Mr. Bardwell objects.

A. I don't know as he is, any more than other men. I am not in town very much and don't hear very much talk, anyway.

Q. And that may be the reason and is the reason that you haven't heard talk about Arnold, is it not?

Mr. Bardwell objects, as it assumes that there has been talk about Mr. Arnold.

Question continued: And as far as you know that may be the reason that Arnold has brought you here as a witness?

A. Why, he asked me how long I have been acquainted with him.

Q. Answer the question; yes or no.

A. Would have to answer that yes; can't see any other way of answering it; man subpœnaed me and wanted I should come to Dixon this afternoon.

Q. Have you been a witness before in any of this Clapp litigation in reference to this Clapp land?

A. Yes, sir.

Q. How many times?

A. I think twice; once in Dixon and once in Amboy.

Q. Which side?

A. I think Fletcher was the man that subpœnaed me.

Q. What interest have you in the result of this Clapp litigation?

Mr. BARDWELL: Objected to, as the witness evidently understands the counsel to refer to the case of Mink against Clapp and others, an altogether different litigation from the case in which he is being examined.

A. Well, suppose I might as well tell it. I hold a note against Henry Clap, and account which has never been paid.

Q. Does its payment depend upon the result of this litigation?

A. I expect it does, sir.

Q. How?

A. In the first place I suppose the note is outlawed. Fletcher
395 tells me if he is successful in the case I shall have my pay; it don't amount to much, but then something. That is just about the truth of it.

Q. Has Mr. Arnold promised you anything?

A. No, sir.

Q. I don't mean improperly; I mean promised to see you paid.

A. No, sir; never.

Q. When did Fletcher Clapp promise you that?

Mr. Bardwell objects as immaterial in this case.

A. I could not tell you just when. We have talked about the case—Fletcher and I have. He said this was an honest debt; I ought to have my pay, and, if left in shape so he could pay it, he would pay it, even if outlawed.

Q. Was it before you testified in the other case?

A. No, sir; I think afterwards.

Q. Are you sure about that?

A. I am quite certain; it was afterwards, when I was here at Dixon and swore that Henry owed me this note.

Q. Well, was it before or after you gave your testimony the last time here?

A. I think the first time I gave my testimony was in Dixon, in Mr. Sandford's office, and the next time in Amboy to hear the testimony read. That was last fall or a year ago last fall. Well, I think we talked about the note before the testimony was read to me in Amboy, and we have talked about it since.

Q. Your sympathy, Mr. Fish, has been against Henry Clapp's side of this litigation, has it not?

A. Most any one would feel that way where there is coming—I want you to understand me that he didn't hire me as a witness. The note was given for a plow, and the account was borrowed money that I lent Henry—the same as any of us would do if a man come along and want change; would give it to him to get rid of him.

Redirect examination:

Mr. BARDWELL: What effort, if any, did you make between 1856 and 1870 to collect of Henry Clapp the amount he owed you?

396 Mr. Bethea objects as not proper redirect.

A. After the note become due I saw him several times, and I asked him a number of times to tell me when the note was due—that I needed the money. I don't know just — long I waited, but it seems to me as if it was a year or two after the note was due before I got anything. Then, by hiring teams and going out to his place, he promised me some corn, and I got some corn of him. That is all I got—not enough to pay the note.

Q. About how many times during the years past referred to did you dun him on your claim?

Mr. Bethea objects.

A. I can't tell you, Mr. Bardwell. Nearly twenty years ago, I think, I sold him that plow; guess it was in 1866—spring of '66. I left it with Squire Bodine, at Lee Center, at one time for him to try and get it. He failed to make anything out of it, and he gave me back the note.

Q. The case that you have testified in before and which counsel for defense refers to as the Clapp litigation is a suit in which Mrs. Mink was complainant and in which Fletcher Clapp was a party, is it not?

A. I suppose it is the heirs of Henry Clapp.

Q. You have no interest in the result of this suit, have you?

A. This of Martin Arnold's?

Q. The suit in which you are testifying.

A. No, sir.

Q. In speaking of the result, to your mind, in case the suits referred to by counsel for the defendants were as stated by him and the testimony was offered in them as assumed by him, comes from, does it not, from your not taking into consideration the fact that

for every one speaking against a man's reputation in a community there may be just as good men, though poor, speaking in his behalf?

Mr. Bethea objects as leading.

397 A. I should think that men's talk in regard to a man was their reputation.

Q. You were asked, in substance, that if Henry, Adams, Jacobs, and others had in fact testified as the counsel for defendants assumes, would you not say that Arnold's reputation was bad? Your answer, in substance, was that in that event it would be. Now, did you not leave out — the question entirely the fact that as good men, though poor, in fact did and were accustomed to speak of Mr. Arnold as an honest & truthful man?

Mr. BETHEA: Objected to as leading and otherwise improper redirect, Q. and also because the witness has stated that he never heard anybody else say anything about the question.

A. Of course, a man might have witness- to swear that his reputation was bad; but then I never heard people talk about Martin Arnold as to his truth and veracity excepting in this one case that I spoke of—that is, that I remember; couldn't speak any one's name.

Q. What reason, if any, did Henry Clapp give you when you asked him for the payment of your demand against him, between 1866 and 1870, for not paying you?

Mr. Bethea objects as improper in rebuttal and incompetent and immaterial.

A. Same reason as all men—hadn't the money, I suppose. I asked him for it; never had it; claimed he never did; always his excuse.

Recross-examination by Mr. BETHEA:

Mr. BETHEA: You said that you could not speak any one's name now except Adams, who said Arnold's reputation for truth was bad?

A. I don't know of anybody.

Q. You don't mean that other people may not have told you that he was not a truthful man and you have forgotten? Answer yes or not.

Mr. B-rdwell suggests that the witness has the right to
398 answer the question in his own way, without instruction from the counsel.

A. No.

Q. Would you not believe what Mr. Jacobs and Mr. Little and Mr. Henry Badger and Chaster Badger and Adams and other reputable citizens of Amboy would say as to Arnold's reputation for truth?

A. How must I answer that, yes or no?

Q. Answer yes or no.

A. Yes. I would like to put more to it.

Q. You still say that you never heard anybody else but Adams say anything about Arnold's truthfulness?

A. Not that I remember of could speak of any one's name.

Q. Henry Adams is or has been a constable and one of the proprietors of a newspaper in Amboy, was he not?

A. I believe he was.

Re-redirect examination by Mr. BARDWELL:

Mr. BARDWELL: What did you desire further to say in answer to the question whether you would believe Jacobs and others as to Arnold's reputation?

A. I wanted to say that some of them connected with that has fully worse reputation- than Arnold has in regard to some things. I have heard men speak against Josiah Little, not in regard to his truthfulness and veracity. Of course, every man has his friends and enemies.

Q. Would you not as quick believe the statements of any other reputable citizen of Amboy, though not occupying so high a position?

Mr. Bethea objects as improper redirect, immaterial, and incompetent.

A. Yes, sir.

Re-recross-examination by Mr. BETHEA:

Mr. BETHEA: Which of the names I have mentioned do you consider have worse reputation than Arnold?

A. I said in some respects.

Q. In respect to truthfulness?

Mr. Bardwell objects, the witness having stated that Arnold's reputation was good.

A. I never heard anything against Arnold. How could I answer that?

399 Q. Please read the question.

A. I never heard anything against Arnold, only what Adams told me.

Q. You said on your redirect examination that some of the names mentioned had a worse reputation than Arnold in some respects; which of them do you mean?

A. Be I obliged to answer that?

Q. Yes, sir; you have to answer it.

A. Well, one of my neighbors twitted Henry Adams on stealing wood. I would rather not answer such questions.

Q. What other names have worse reputations than Arnold?

A. Nobody that I know of.

Q. What did you mean by saying that Mr. Little had a worse reputation than Arnold in some respects, or that you heard people talk about him?

A. I didn't say—don't know that I said he had a worse reputation than Arnold.

Q. You don't mean to say that, do you?

A. No; I don't mean to say that Arnold has a bad reputation.

Q. Mr. Little is your leading banker, is county treasurer and has been for years, and one of your most respected citizens, is he not?

A. Calculated to be; yes, sir.

Q. Isn't it true that the other names I have mentioned are those of men who are in equally good standing as that of Mr. Little?

A. That is Jacobs and Church you are speaking of; yes, sir.

Q. And the Badgers?

A. Heard something about the Badgers; people always talk about millers.

Q. Do you mean to intimate, sir, that their general reputation for truth has ever been questioned?

A. No, sir; neither one of the parties you spoke of.

Q. And it is not true that the reputation of the people given was worse for truth than that of Mr. Arnold?

Mr. Bardwell objects, as the witness has already stated that Mr. Arnold's reputation for truthfulness was good.

400 Mr. Bethea objects to counsel's statement for the reason that its evident object is to lead the witness in his answer.

A. I never.

Q. Answer it yes or no.

Mr. BARDWELL: I insist upon the master's instructing the witness that he has the right to answer the question in his own way, without dictation from the counsel.

EXAMINER: The examiner would state he does not consider that he has the power to compel the witness to answer in any manner.

Q. It is not true, then, that the reputation of the people whose names I have given, for truth, is worse than that of Arnold's. Answer yes or no.

A. Answer yes or no?

Q. Yes.

A. No.

Mr. BRADWELL: Do you mean to be understood by your last answer as saying or insinuating that Arnold's reputation for truth and veracity is not good?

Mr. Bethea objects, because it is improper at this time and leading.

A. No.

Q. Are there not as many men in Amboy who are not bankers, postmasters, or railroad sup'ts, and yet whose judgment as to a man's reputation in a community is just as good as Little's, Jacobs', Badger's, or Adams'?

Mr. BETHEA: Objected to as incompetent, immaterial, and highly improper.

A. Yes, sir; I suppose there is lots of them.

Third recross:

Mr. BETHEA: Do you know that any of the others would swear that Martin L. Arnold's reputation for truth was good; do you?

A. I don't know what they would swear.

Q. You don't know but what a great many of them have sworn that his reputation was bad, do you?

A. No, sir; I don't know it.

401 Q. You could not pick out any number of men whose standing was higher in Amboy than names I have mentioned, could you?

A. I don't know that you could pick out any better men than Little, Jacobs, and Badgers. I suppose there is just — good men, although they are poor.

Q. Now, please explain what you meant when you said that Arnold's reputation was no worse than the reputation of many of these names I gave you, and what you meant when you said that these men did not have as bad a reputation as Arnold, if you did not mean that Arnold's reputation was bad.

A. Well, to explain it. Of course, when the Badgers run the mill they—that is, talking about people not in regard to their truth and veracity—the Badgers had the reputation of stealing grain. That is what people talked.

Q. Is that all you want to say in answer to that question?

A. That is enough, I guess.

Q. Do you think their reputation for stealing grain is worse than a reputation for forging a receipt?

Mr. Bardwell objects, as assuming that some one, presumably Mr. Arnold, has the reputation of forging a receipt.

A. I suppose forgery is a little more high-toned.

Q. You have stated that you heard that Mr. Arnold had forged a receipt, have you not?

A. Yes, sir; I heard it talked of.

Q. You also heard that he swore that it was a genuine receipt, did you not?

—. I don't know that I did.

Q. You heard that talked of, didn't you?

A. The forgery? Yes, sir.

Q. How could you swear, then, that his reputation for truth was good—that is, that people said it was good?

A. I didn't hear any one say it was good or hear any one say it was bad.

Q. How could you swear that his reputation was good?

A. I never heard anything against it, only as I have stated.

Q. Didn't you hear he forged a receipt?

A. Well, that was talked of.

402 Q. Is that your best judgment, that that would not be against his truth and veracity?

A. I didn't hear that he swore to it. *A.* I saw the receipt just a little while after Mr. Wilcox died.

Q. If he forged a receipt and produced it as his own, as you have stated, and that was the general talk of the people in his neighborhood, how can you say that his reputation for truth was good?

Mr. Bardwell objects, the witness not having stated that Arnold forged a receipt and stated it was his own. Mr. Bethea stated that he did so state.

A. Some people talk in that way and some people talk the other way, that they didn't believe he forged it. I have heard both sides talk—as many in favor of Arnold as against him, or more. I saw the receipt and always believed it to be genuine.

Q. Then you have heard other people talk against his truthfulness than Adams, have you not?

A. I don't know as I have.

Q. Didn't you just say so?

A. Only in this case of this receipt, heard men talk about it some.

Q. Then you have heard talk against his truthfulness from others than Adams, haven't you?

A. Yes, if you call that in regard to his truth and veracity; have heard lots of people say they believed it was a genuine receipt. Of course, there was lots of talk about it.

Q. Was it not the general speech of the people in the neighborhood of Amboy, after the court had decided it was not the receipt of Wilcox, and that Arnold had forged it, that it was a forgery?

A. I don't remember just how that case come out, as I told you before.

Q. Was it not the general speech of the people that it was a forgery after the decision of the court?

A. I could not answer that.

Q. You have stated that the Badgers were as respectable a
403 people as there were in Amboy, have you not?

A. Yes, sir.

WASHINGTON I. FISH.

Court adjourned till Feb-uary 18th, at 9 a. m.

Subscribed and sworn to before me this eighteenth day of May, A. D. 1886.

JAMES F. SANDFORD,
Special Examiner.

FEB-UARY 18TH—9 a. m.

WILLIS BRONSON, a witness produced on behalf of complainants, being duly sworn, testified as follows:

Mr. BARDWELL: What is your name, age, and place of residence and occupation?

A. Willis Bronson; residence, Binghampton, in the town of Am-

boy; age, fifty; mechanic—carpenter and wagon-maker; work at both.

Q. How long have you resided in or near the city of Amboy?

A. Over thirty years. That has been my permanent home, although have been away at times two or three months at a time.

Q. Are you acquainted with property in the city of Amboy described as the east eighteen feet of the west thirty-one feet of lot five, block eleven, commonly known as the Market lot?

A. Yes, sir; I am.

Q. Do you own any property in the city of Amboy?

A. No, sir; not in the city.

Q. Were you acquainted with the value of real estate in the city of Amboy in 1860?

A. Yes, sir; I think I was.

Q. What, in your opinion, was the value in that year of said Market lot, with the building then standing thereon?

404 A. Well, I should say, to the best of my judgment, being often in the building, that it was not worth over from $300 to $350.

Q. Describe the building with reference to its structure and condition in 1860.

A. Well, it was a very cheap-built building, and was in bad condition, floors being bad, and the roof was bad.

Q. What kind of frame was it?

A. It was what we call a bal-oon frame—light.

Q. About what was its size?

A. Well, I couldn't tell the exact size. I should say that it was probably—I wouldn't answer that positive—about sixteen or eighteen feet wide and twenty long.

Q. How many stories high?

A. Only one.

Q. Are you acquainted with Martin L. Arnold, of Amboy?

A. Yes, sir.

Q. How long have you known him?

A. Well, from 25 to 30 years.

Q. How near to him have you resided during those years?

A. Well, from a mile to a half of a mile.

Q. Do you know his general reputation for truth and veracity in the community in which he lives?

A. I consider it good.

Mr. BETHEA: Answer objected to.

Q. You were asked to say whether you know his general reputation, in the community in which he lives, for truth and veracity.

A. I think I do.

Q. What is that reputation—good or bad?

A. Good.

Cross-examination:

Mr. BETHEA: Who told you what you were to swear to here?

A. Not anybody.

Q. Did you know what you were to swear to here?
A. I did not.
Q. Did you know what you were expected to swear to?
A. I knew this far: Mr. Arnold asked me one day if I remembered about this lot. I told him that I did. That was all the talk we had together in regard to this lot.
405 Q. Didn't you know that he expected to prove his reputation by you?
A. No, sir. I did not.
Q. Didn't he tell you what the questions would be in that particular?
A. No, sir.
Q. Didn't you talk with his attorney and learn from him about what questions would be asked you?
A. No, sir.
Q. What has Mr. Arnold promised you for coming up here to swear in his behalf?
A. Nothing. He has promised me nothing.
Q. Don't you expect to receive something from him for it?
A. I expect nothing but regular fee.
Q. Has he promised that?
A. He did not.
Q. How much property do — own anywhere?
A. I own a house and lot in Binghampton.
Q. How much is it worth?
A. It is worth probably four hundred dollars. I don't know as I could sell it for that.
Q. Is that all?
A. Wait a minute, please. I was not through with that answer. Although it is a very nice little property, but property is very low.
Q. Is that all you own?
A. Yes, sir.
Q. How near do you live to Arnold?
A. I think it is just about a half a mile.
Q. Are you any relation to him?
A. I am not.
Q. Have you ever done any business for him?
A. I have not.
Q. Are you interested with him in any manner in business or otherwise.
A. I am not.
Q. Have you any interest in the result of this suit or any suit about the Henry Clapp farm?
A. I have not.
Q. Where did you live in 1860?
A. I lived in Binghampton. I—that is my home.
Q. How much——
A. Wait a moment, please. Up to May, in 1860; up to May, when I enlisted.
Q. How much property did you buy in Amboy before that time?
A. I bought none—that is, in reference to the city. I did in the

township, in Binghampton, where I now live; it is a mile from the city.

406 Q. The house you live in?

A. No, sir.

Q. How much property do you know of being sold in Amboy in 1860 and know the price of?

A. Well, not a great deal.

Q. Can you swear to the amount of a single sale?

A. No, sir. I think I couldn't.

Q. You don't know, then, the value of any property in Amboy, do you, in 1860?

A. According to my judgment, I think——

Q. Answer the question.

A. I don't know that I do positive.

Q. How can you have any judgment if you didn't buy or sell any lots or didn't know of the sale of any lots in Amboy at that time?

A. Well, by being used to building some and knowing the building and shape of the lot—buying property within a mile of it—I think I could form some idea of what it was worth.

Q. There was no comparison between the value of lots in Binghampton and Amboy then, was there?

A. Well, I think there was some.

Q. Were not lots in Amboy a great deal higher than in Binghampton?

A. Yes, sir; they was.

Q. How does your knowledge of building help you to determine the value of lots when you don't know what they were sold for?

A. Why, a lot with the building on—a man that is used to building ought to have some judgment in regard to what the building is worth.

Q. But that would not help him to determine the value of the lot itself, would it?

A. No; not altogether..

Q. How long had that building been there in 1860?

A. I couldn't state the exact time.

Q. About how long?

A. Well, I should say 8 or 10 years, and probably more.

Q. What makes you think more?

A. Well, I don't know; it's something I had never thought of, or keep dates.

Q. Was Amboy there at all before the Ill. Cent. road was built?

407 A. No, sir.

Q. Piece of prairie before that, was it not?

A. A few farm-houses there.

Q. This building was not there, was it?

A. I think not.

Q. When did the Ill. Cent. road pass through Amboy?

A. I think in 1854, wasn't it?

Q. Wasn't it 1856?

A. I think not. I would not swear positive.

Q. How long after the road passed through there was this building built?

A. I think it was one of the first.

Q. Then it could not have been eight or ten years old in 1860, was it?

A. No, sir; I suppose not.

Q. You then have sworn to something that is not true, haven't you?

A. Yes, sir; I suppose I—that being the case; I have not kept dates.

Q. Have you been as reckless in the rest of your testimony as you have in this proposition?

A. No, sir; I have not.

Q. How do you know?

A. Why, I know that I have not; that I have told the truth, as far as I know it, as far as I could.

Q. What made you reckless on this proposition?

Mr. BARDWELL: I object to that, the witness not having stated that he had been reckless, but only that he had been uncertain as to date.

A. Being mistaken on dates—having nothing to keep an account.

Q. Did you think of that answer before Mr. Bardwell suggested it to you?

A. I did.

Q. Are you — sure of that as anything else?

A. Yes, sir.

Q. How much did that building cost when it was built?

A. I could not tell you.

Q. What is your judgment?

A. Well, I should say not over $125.00.

Q. What makes you think that?

A. Well, judging from other buildings and building other buildings.

Q. You pretend to say that you can build a building 18
408 by 20 for store purposes, with a front, with an addition on behind, new, for $125.00, or that it could have been so done in 1856?

A. I think it could; yes, sir; as good a building as that.

Q. Wasn't it used for store?

A. I think it was one of the first; had a few goods in it.

Q. What makes you look at Mr. Arnold when you are testifying?

A. I don't know that I have any particular cause for it or that *that* he has winked at me or anything else of the kind. I have endeavored to look at you.

Q. Don't you look at him because you want suggestions from him as to your answers, and because you don't know a thing about what you are testifying to?

A. No, sir; I do not.

Q. And hasn't he by look or nod suggested to you your ans-ers?

Mr. BARDWELL: Objected to as entirely unwarranted, in fact, and is simply asked for the purpose of intimidating the witness.

A. He has not.
Q. Wasn't that lot itself in 1860 worth at least $800?
A. To my judgment it was not.
Q. How do you know?
A. I know because there was better lots that could be bought for less money, and that it was sold for less money.
Q. When was it sold for less money?
A. I don't remember the dates.
Q. How do you know it was sold for less money?
A. I heard it talked about being sold on a mortgage.
Q. Give your judgment as to the time.
A. That's a question I could not answer correctly, not——
Q. Before or after 1860?
A. I think it was after.
Q. Before or after 1868?
A. I don't think it was after 1868.
Q. How do you know other property in 1860 could have been bought for less money?
A. Well, I heard people talking about lots.
Q. When?
A. That is something—I couldn't give you the dates.
Q. Haven't you sworn that you didn't know of any sales in 1860 in Amboy?
409 A. Yes, sir; I have that. I knew of no positive sale of any particular party.
Q. Haven't you sworn that you didn't know the value of lots in Amboy in 1860?
A. Why, I swore that I didn't positive by parties buying, with the exceptions of my judgment.
Q. How much did that property rent for in 1860?
A. I could not tell you.
Q. Didn't it rent for at least $25.00 per month.
A. I should think not.
Q. Why?
A. Because I don't think there was any property like that that rented as high as that in Amboy—ever rented as high.
Q. You don't know that it didn't, do you?
A. I don't, because I never rented no property in Amboy. I afterwards, in 1864, bought property in Amboy and kept it a year or two—sold it again.
Q. You went into the army in 1860?
A. Yes, sir.
Q. Was there three years?
A. Yes, sir.
Q. How long had you lived in Amboy township in 1860?
A. I had lived there 18 or 20 years.
Q. How old were you then?
A. I was twenty-odd.

Q. You didn't know much about the value of property then, did you?

A. I think I did some, for I had always been doing business for myself since I was ten years old. I had no parents, and in 1864 bought this property.

Q. Bought which property?

A. House and lot in Amboy.

Q. Do you pretend to give what your judgment was in 1860, now?

A. Yes, sir.

Q. Do you pretend to remember what you knew about it then?

A. Well, I partially do.

Q. Are you not giving your judgment as to what the property was worth then?

A. I am certainly giving my judgment now, but referring back as near as my memory will admit to that time.

Q. What business do you follow now?

410 A. Carpentering and wagon-work part of the time.

Q. How much of the year do you work?

A. Work through the summer season at carpenter-work.

Q. What do you do in the winter?

A. Work at wagon-work—repairing wagons.

Q. Where?

A. In Amboy.

Q. How many days have you worked this winter?

A. Well, that I could not tell you; it has not been steady work.

Q. How much of the time in the year do you spend in loafing around Amboy and Binghampton?

Mr. Bardwell objects, as it is an insult to a poor, but hard-working, man.

A. I would like to say a word or two cordially. I have lived there in Amboy; have worked for the Badgers, Mr. Bethea's friends, with the exception of while I was in the army, for twenty years, until the mill burnt down the last time; help- to build Badger's mill the third time; always run in it; worked in it from the time it started till the night it burned; and as to my reputation, if they want to prove it, I would subpœna the Badgers—all of them—Mr. Little, Mr. Jacobs, and Mr. Bethea's friends.

Mr. Bethea objects to the answer as not responsive.

Witness continuing: And I think was a leading question.

Q. Now answer the question.

A. What is it?

Question repeated.

Answer. As for Binghampton, there is no loafing place, and I don't think I have been three evenings within a year after six o'clock away from my own home or even been into a neighbor's house more than just to call on business a dozen times within a year or two years; and as for loafing in Amboy, I don't think there is a merchant

that will say, any of them, or a saloon, if you want to go down
411 to that, that I have been into and spent my time loafing.

Q. How do you spend your time in saloons?

A. I don't spend much time in saloons.

Q. What do you do when you are in there?

A. I should consider that as a leading question, although I shall answer it. I sometimes go into a saloon and drink a glass of beer and go out.

Q. Don't you go in very often?

A. No, sir.

Q. That is, in your judgment you don't?

A. I don't know who shall judge that if I don't.

Q. What do you mean by general reputation for truth and veracity?

A. I mean that a man's reputation is good, as far as I know.

Q. What do you understand reputation means?

A. I understand it means a man of truth and honorable in his dealings.

Q. You don't understand, then, that it means what the people say about a man generally, do you?

A. No, sir; I do not.

Q. You—when you swear — a man's reputation for truth you swear to what you know about him yourself; don't rely upon rumors and talk?

A. I swear to what I know and what I heard.

Q. How many people have you heard say that Martin L. Arnold was a truthful man?

A. I don't know that I ever talk with a man on the subject.

Q. Then you haven't heard anything about it?

A. Nothing in particular; no.

Q. When you swear to his reputation you swear to what you think of him yourself, then?

A. I do and to—that's all.

Q. You have sworn that you never did any business with Arnold, haven't you?

A. I did.

Q. How do you know of your own knowledge that he is truthful in business matters?

A. Because I have never heard anything to the contrary.

Q. Do you swear to that?

412 A. Yes, sir; I heard yesterday here; that is all I heard.

Q. Do you swear that you never heard anything against Martin Arnold's truthfulness before yesterday?

A. I did not.

Q. You knew that he had a great many lawsuits, didn't you?

A. I never heard of no lawsuits where any character or anything was depending until yesterday.

Q. Hasn't it been the common talk of the neighborhood there for at least ten years that Arnold was an untruthful man, and that in all of his lawsuits that he has been successfully impeached?

Mr. Bardwell objects as based upon a false assumption.

A. Not before me it has not.

Q. Why didn't you hear it?

A. I suppose the reason was, if there was any such talk, because I was not amongst the people that talked it, or possibly might at the time of these trials been away from home, as I have for a month or two.

Q. If there had been such talk, and if he has been successfully impeached in at least 5 suits by his neighbors, and you *did* had known that, you could not have sworn that his reputation for truth was good, could you?

A. I don't know that I could as far as other people was concerned and as far as I know it is.

Q. You know, don't you, that all that you are allowed to swear to is what other people say about him?

Mr. Bradwell objects to that as not true nor a fact.

A. That I did not, sir, as I supposed a man had to swear according to his own knowledge and not to other people's.

Defendants' counsel asks that the testimony of this witness on question of reputation be stricken out, for the reason that it is based upon his own alleged knowledge and not upon what others say or do not say about Arnold.

Ques. Did you hear about Arnold's presenting a receipt
413 against the estate of Allen E. Wilcox, claiming that it was Wilcox's receipt, when, in fact, it was proved to have been a receipt written by Arnold himself—the signature by him?

A. I did not until yesterday.

Redirect examination by Mr. BARDWELL:

Mr. BARDWELL: What you heard yesterday upon the subject occurred on the examination here of Mr. Fish, did it not?

A. Yes, sir.

Q. How often within, say, a year past have you been in saloons?

A. Oh, I couldn't say how often; sometimes I might go in once a day for two or three days and then not go in again for two or three weeks at all; having some work at home, I haven't been in Amboy in ten days till I came to take the train yesterday, and I was not so very dry as to go in yesterday, I think.

Q. Do you ever become intoxicated?

A. No, sir; have years ago, but not for years.

Recross-examination by Mr. BETHEA:

Mr. BETHEA: You were not dry, you say, yesterday?

A. I didn't enter no saloon nor get a drink.

Q. Why weren't you dry?

A. I didn't make a habit of going into a saloon every time I go past.

Q. Wasn't the reason that you were not dry because you keep your liquor at home?

A. I never kept a drop of liquor at home in my life.
Q. What do you call being intoxicated?
A. I call being intoxicated when a man has drunk so much he will reel in the street, or has not got good sense and can't attend to business.
Q. How long since you have been in that condition?
A. I don't think I have in ten years.
Q. Will you swear that you have not within five years?
A. Yes, sir.

WILLIS BRONSON.

Subscribed and sworn to before me this eighteenth day of May, A. D. 1886.

JAMES F. SANDFORD,
Special Examiner.

414 A. GRAVES, a witness produced by complainant, being duly sworn, testified as follows:

Mr. BARDWELL: What is your full name?
A. Aspasio Graves.
Q. What is your age, place of residence, occupation, and business?
A. Age is sixty-four; I have been in the tile business for the last two years; Amboy is my residence.
Q. Are you acquainted with Martin L. Arnold, of the township of Amboy? And, if so, how long have you known him?
A. I am, I think, thirty years.
Q. How near to him have you resided during those years?
A. For 27 or 8 of them, within a fourth of a mile.
Q. Are you a man of family?
A. I am.
Q. Do you or not own a home in the city of Amboy?
A. I do.
Q. Are you acquainted with the general reputation for truth and veracity of Martin L. Arnold in the community in which he lives?
A. I am acquainted with him.
Question repeated.
A. I am.
Q. What is that reputation, good or bad?
A. Good.

Cross-examination by Mr. BETHEA:

Mr. BETHEA:

Q. What part of the tile business were you connected with?
A. Two or three different. I worked at two or three different branches. The principal branch was burning.
Q. Your business then was a laborer in a tile factory?
A. Yes, sir.
Q. You didn't mean to convey the impression that you were running the tile factory—owning one?

A. I did not.
Q. How long have you been engaged in that business?
A. Two seasons.
Q. How much of the time each season?
A. About eight months.
Q. How much of the time during the eight months did you work in the tile factory?
A. We didn't get in full time.
415 Q. How many days in a week?
A. Sometimes seven and sometimes not more than three or four.
Q. What did you do the days you didn't work in the factory?
A. Sometimes I done nothing.
Q. Where did you spend your time?
A. Home.
Q. Did you spend any of your time down town?
A. I live right in town.
Q. Did you spend any of your time around the streets and in the saloons?
A. I am often in the streets.
Q. Are you not often in the saloons?
A. I have been in them.
Q. When you are not at work don't you spend a great deal of your time in the saloons?
A. I do not.
Q. How much of the time?
A. Not but a very little.
Q. What do you drink when you go in there?
A. How do you know I do drink?
Question repeated.
A. I don't always drink when I go into a saloon.
Q. When you do drink what do you drink?
A. I have drank beer and I have drank whiskey.
Q. Don't you generally drink it when you get a chance?
A. No, sir.
Q. How many times have you drank at Mr. Arnold's expense within the last six months?
A. I have drank in my lifetime two drinks of beer with Mr. Arnold, and no more.
Q. How long ago were those drinks?
A. Well, I don't know.
Q. Couldn't you be mistaken as to number?
A. I am not.
Q. Do you remember the number of times you have drank with everybody at Amboy?
A. No, sir.
Q. How can you remember your drinks with Arnold better than you can with others?
A. Because I have drank less with him than with others.
Q. He didn't treat very often?
A. Never did but twice.

Q. What buisness did you follow before you went in a tile factory?
A. My principal buisness — in the meat buisness; fresh meats.
Q. Keep a butcher shop?
A. Yes, sir.
416 Q. What other buisness did you follow?
A. When I was not in the meat buisness I was what you might call a common laborer for the last eight years.
Q. Have you done any buisness with Arnold?
A. Never done no buisness with him, only I bought some property of him.
Q. Ever work for him?
A. Very few days.
Q. Are you in any way interested in him?
A. No- at all.
Q. Are you his relative?
A. I am not.
Q. Are you interested in the result of this or any of the Clapp suits?
A. I am not.
Q. Can you tell how Arnold happened to pick you out to come up here and swear to his reputation?
A. No.
Q. Have you any idea about it?
A. I have not; didn't know it till last Saturday; didn't know he had a suit.
Q. Did he tell you what he wanted to prove by you?
A. He said he wanted to prove the worth of that land.
Q. Is that all he wanted to prove by you?
A. It seems to me he said something else; I don't know what it was.
Q. Didn't he tell you to swear that his reputation was good?
A. He said they would ask me that question, probably.
Q. What did he say about that?
A. Didn't say anything.
Q. Did you tell him you would swear it was good?
A. No, sir.
Q. What did he promise you if you would come up here and swear that it was good?
A. He made no promises.
Q. What did he intimate he would do for you?
A. He has not intimated he would do anything.
Q. What do you expect to get for it?
A. If I get anything I will get more than I ever did for being a witness yet.
Q. Did he not promise to pay your fees—expenses?
A. He promised to pay me fees—car fare.
Q. Why, don't you expect to get that?
A. I have got it.
Q. What did you get from him?
A. I got a railroad ticket.

Q. Have you got your fees?
A. I got a ticket.
417 Q. Got your witness fee?
A. No, sir.
Q. Why don't you expect to get that?
A. I never did.
Q. Don't you believe what he told you when he said he would pay your fees?
A. He didn't say he would pay any fees, only my *my* car expenses.
Q. Didn't you swear a minute ago that he promises to pay you fees?
A. Car fees.
Q. What do you mean by car fees?
A. Ride up and back.
Q. Didn't you swear that he promised to pay your fees?
A. I didn't swear that he promised to pay anything but my fare up and back—my expenses.
Q. Well, have you got your expenses?
A. He paid my fare up.
Q. Do you expect to get your other expenses?
A. I expect to get my fare back.
Q. Don't you expect to get your other expenses?
A. I don't look for any.
Q. Why?
A. Probably may be dead before it comes.
Q. He promi-ed to pay them, didn't he?
A. He didn't promises to pay anything but my fare up and back.
Q. Did not you just swaer that he promised to pay your fare and other expenses?
A. He did not agree to pay me anything for being a witness.
Q. Answer the question, yes or no.
A. I did swear that.
Q. Why don't you expect to get them?

Mr. BARDWELL: I insist that witness has the right to answer that question complete.

Continuation of answer: He didn't agree to pay any other fees.
Q. Why don't you expect to get your other expenses if he promised to pay them for you?
A. He did not agree to pay me anything, only my fees—my traveling fees. Expense here, nothing said about it.
Q. He agreed to pay your other expenses. Why don't you expect to get them?
A. I said I never did get any witness fees.
418 Q. Isn't the reason that you don't believe what he said when he told you he would pay them?
A. I believe if he had told me he would pay my witness fees, he would.
—. Answer the question.
—. I do believe what he says.
Q. He told you, as you have sworn, that he would pay your other

expenses, and you have also sworn that you didn't expect to receive them. Now, tell me what reason you have for not expecting them, unless it is because you don't believe what he told you.

A. If I swore that he told me that he would pay anything but my fare up here—expense up here—I want to take it back, because it is not right.

Q. What do you understand by general reputation for truth and veracity?

A. I understand that a man that I have dealt with deals with me honestly, I never heard but what the man's reputation for truth and veracity was good.

Q. You base your opinion, then, upon your knowledge of the man and not upon what people say or do not say about him?

Mr. Bardwell objects, as it is unwarranted by the witness'es last answer.

A. I do.

Mr. Bethea, def'ts' counsel, asks that all of the testimony of this witness be stricken out as incompetent.

Q. You have no knowledge of the man, yourself, in a buisness way, as you have shown?

Mr. Bardwell objects, as being untrue.

A. I have knowledge of the man.

Q. Didn't you say you never did any bisiness with him; that you only worked for him two or three days?

A. I said I had bought property of him and worked for him two or three days. That is all the buisness I had with him.

Q. How much property did you buy of him?

A. A house and lot.

Q. In Amboy?

A. In Amboy.

Q. When?

A. I think, 17 years ago.

419 Q. Do you owe him anything?

A. I do not.

Q. Does he owe you anything?

A. He does not.

Q. Your knowledge of him, then, is based upon that one transaction and the few days you worked for him in a buisness way?

A. That is all the dealings I have had with him.

Q. That is all the knowledge you have of him as a buisness man and as to his truthfulness in buisness matters, isn't it?

A. I think so.

Q. And from that you swear that he is truthful?

A. I do.

Q. You don't know as to his truthfulness in any other buisness transaction?

A. I do not.

Q. You don't know but what in his other business transactions he has been very untruthful and very unreliable?

A. I don't know.

Q. Have you ever heard people talk about him in regard to his truthfulness and reliability?

A. I should think I had.

Q. Have you ever heard anybody say that he was a truthful and reliable?

A. I couldn't say that I ever heard them say that he was or was not truthful and reliable.

Q. Have you ever heard anybody say that he was not?

A. I don't know that I have.

Q. You say that you have heard people talk about his truthfulness and reliability, and that you have not heard them say that he was truthful and reliable. Now, must it not be that you have heard people say that he was unreliable and untruthful?

A. I don't know as I ever heard them say that he was not truthful or that he was.

Q. Will you swear that you haven't heard people say that he was untruthful and unreliable?

—. I don't know that I have.

Q. You won't swaer that you have not?

A. No, sir.

Q. You have known him to be engaged in a great many lawsuits, have not you?

420 A. Not a great many.

Q. You have known of his suits with Wilcox'- estate, haven't you?

A. I did know there was a suit.

Q. You have heard about that suit, haven't you?

—. Yes, sir.

Q. You heard, didn't you, that the estate had a claim against him, and that he presented a forged receipt against it?

A. I heard something about a forged receipt, but I don't know nothing about it.

Q. Do you consider that as an indication of truth and veracity?

Mr. Bardwell objects to this as based on an unwarranted assumption of the fact.

A. I don't know what there was of it.

Q. How high a standing must a man reach before you can say that his reputation for truth and veracity is good?

Mr. Bardwell objects as incompetent.

A. Any man that I know to be a truthful man, I call that a man of truth and veracity.

Q. Would you require a man to invariably tell the truth before you would say he was truthful, or would you overlook some little mistakes in that particular?

A. If I knew a man wasn't truthful I would not overlook it.

Q. What other suits do you know about Arnold's being in?

A. I heard the railroad had a suit against him.

Q. Did you hear that they produced at least a dozen of the best people in Amboy to swear that his reputation for truth was bad?

Mr. Bardwell objects as being wholly untrue in fact.

A. I never heard it.

Q. Didn't you hear that the Illinois Central Railroad Company produced from twelve to thirty of the best people in Amboy to swear that his reputation was bad, and that he then dismissed his suit?

421 Mr. Bardwell objects to this as not containing a word of truth.

A. Mr. Bethea, counsel for defens-, says that the opposing counsel don't know anything about it except what Arnold has told him; that Arnold has told him what is not true, and that the facts are as stated by defendants' counsel.

Counsel for compl't, Mr. Bardwell, suggests that the counsel for defense is entirely mistaken in his last expression, and that if he knows more about the knowledge of the counsel for complainant that such counsel does he is smarter than counsel for complainant thinks he is.

A. I didn't know that they produced one.

Q. Did you hear about Arnold's lawsuit with Cephas Clapp?

A. I did not.

Q. Did you hear in that suit that Arnold swore that he had paid a certain note; that the other side produced no evidence whatever on the subject of payment except the note, and a dozen or twenty of the best people of Amboy *who* swore that Arnold's reputation for truth was bad, and that they would not believe him under oath, and without further evidence the jury found against Arnold.

Mr. Bardwell objects to this question on the ground of its being unwarranted by the facts in the case.

A. I did not know that he ever had a suit with Clapp.

Q. Did you know that Arnold was a witness in the case of Lot Chadwick against Edwin Clapp; that he swore to notice to Lot Chadwick of the Edwin Clapp claim and was the only man that so swore; that such question of notice was the chief question in the case; that a dozen or more reputable citizens of Amboy swore that Arnold's reputation for truth was bad, and that Judge Brown decided

422 that Lot Chadwick never had received any notice, as testified by Arnold?

Mr. Bardwell objects, as unwarranted by the facts.

A. I didn't know that he ever was a witness on the case.

Q. Did you know that in this present case John C. Church, coroner of the county; Josiah Little, treas. of the county; John C. Jacobs, sup't of the Ill. Cent. R. R. Co.; Henry Badger, postmaster; Chester Badger, citizen, and other respectable citizens of Amboy swore that Arnold's reputation for truth was bad?

Mr. Bardwell objects as incompetent.

A. I did not; don't know anything about it.

Q. Hasn't there been in the last ten years a general talk in the community of Amboy that Martin L. Arnold was untruthful and unreliable?

A. There hasn't, to my knowledge.

Q. If these witnesses have sworn to his reputation, as I have stated to you, and you had known it, could you have sworn that his general reputation for truth in that neighborhood was good?

A. I don't know but that it would have a bearing on my mind, and I don't know as it would. Had I known it, i- might have had a bearing.

Q. Wouldn't you have believed what those gentlemen said in reference to it?

A. I don't always believe everything I hear.

Q. Wouldn't you have confidence in their statements?

A. If those gentlemen should state them to me as facts I would believe them as quick as anybody.

Q. If these statements that I have made as to these people swearing that Arnold's reputation was bad and as to the forgery of the Wilcox receipt are true, how does it happen that you never heard about it there in Amboy?

Mr. Bardwell objects, as it is calling on the witness to account for something that does not exist.

423 A. I was gone from Amboy from 1861, most of the time, till 1876. This might have happened when I was gone. I don't know when it happened.

Q. Where were you the last five ye-rs of your absence?

A. In Memphis, Tennessee.

Q. Have you lived in Amboy continuously since 1878?

A. Most of the time.

Q. How much of the time have you been away?

A. I was in Memphis two years ago.

Q. How long?

A. About seven months.

Q. How much of the rest of the time have you been away?

A. Most of the time here.

Q. Now, don't you think that the reason Arnold called on you to testify for him in this particular is that you have been away and didn't know what he had been doing or what people have said about him?

Mr. Bardwell objects on the ground that it is incompetent.

A. I don't know.

Redirect examination by Mr. BARDWELL:

Mr. BARDWELL: About how far is it from Amboy to Binghampton?

A. One mile. I don't know what part of Binghampton you mean.

Q. How far is it from Amboy to Badger's mill, which is about the center of Binghampton?

A. I should think about a mile and an eighth.

ASPASIO GRAVES.

Subscribed and sworn to before me this eighteenth day of February, A. D. 1886.

JAMES F. SANDFORD,
Special Examiner.

424 Mrs. ANN MCMAHON, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

Examined by Mr. BARDWELL:

Mr. BARDWELL: What is your name, age, and place of residence?

A. Ann McMahon; fifty-eight; Amboy.

Q. How long have you resided in Amboy?

A. 30 years.

Q. Are you acquainted with W. E. Ives, of Amboy? If so, how long have you known him?

A. Well, I have known him for pretty near thirty years.

Q. Are you acquainted with property in the city of Amboy described as the east eighteen feet of the west thirty-one feet of lot five, block eleven, and commonly known as the Market lot?

A. Yes; I bought that place once; built on it and sold it again.

Q. Of whom did you buy it?

A. Mr. Ives.

Q. To whom did you pay the money for it?

A. Mr. Ives.

Q. Did Norman H. Ryan have anything to do, so far as you know, with the sale of the lot to you?

A. No, sir; nothing at all.

Q. Who did you pay for the lot?

A. Mr. Ives.

Q. How much of lot 5, block 11, did you purchase of Mr. Ives?

A. I guess about eighteen feet.

Q. How much did you pay for what you bought?

A. $400.00.

Q. What use did you make of the property?

A. Built a small store there. It was occupied by the post office.

Cross-examination by Mr. BETHEA:

Q. Did you buy the lot yourself?

A. Yes; Mr. McMahon was with me when I bought it.

Q. Was the deed in your name or your husband's?

A. Mine.

Q. Who signed the deed to you?

A. Ives has given us the deed.

Q. Did he give you the deed that was signed to somebody else, or did he sign it himself?

425 A. Mr. Mac done the business after the first time; I didn't go any more.

Q. Who do you understand owned the lot when you bought it?

A. Ives.

Q. When did you buy it?

A. Well, I can't really say whether it was in '64 or '5.

Q. Was it one of those years?

A. Yes; one of those years.

Q. Where is the deeds now?

A. We sold to Mr. Cunningham.

Q. You bought, then, eighteen or twenty feet?

A. Yes, sir.

Q. How much more was there of the lot that you did not buy?

A. No more.

Q. Was that all that Mr. Ives owned or controlled there?

A. That is all.

Q. How deep was the lot?

A. I can't tell you exactly; it was a 3-cornered lot; it was not large.

Q. How much did you say you paid for it then?

A. Four hundred dollars.

Q. How do you know that it was not seven hundred dollars?

A. Because I paid the money myself.

Q. Couldn't you be mistaken about it?

A. Not at all, sir.

Q. It was a great many years ago and you have not pretended to keep the facts in your mind during all that time; how do you know but you may have mistaken the amount?

A. My memory is good on financial matters.

Q. Have you bought any other lots in Amboy in the last 30 years?

A. Bought a double lot adjoining that, with a building on it.

Q. Any other lots?

A. In connection with this one?

Q. No; at any time.

A. Yes.

Q. How many lots have you bought in Amboy in 30 years?

A. Well, I don't understand you.

Q. What I want to know is, how many lots you have bought in Amboy in 30 years?

A. Three lots in Amboy.

Q. Do you know how much you paid for each?

A. Yes.

426 Q. Did you keep any memorandum of the payment?

A. No; Mr. Mac has.

Q. Have you looked at them?

A. No.

Q. How do you know you may not mistake the payment on some other lot for the payment of this lot?

A. For the reason that they were all paid separately.

Q. How did you pay it; -n cash?

A. In cash.
Q. When did you build the building on it?
A. A few months after we bought it.
Q. What kind of a building?
A. Brick.
Q. How much did it cost?
A. Can't tell that.
Q. About how much?
A. Not more than $500.00; one story.
Q. Couldn't it have been $600.00 or $700.00, perhaps?
—. No; I think not.
Q. You didn't keep any account of it, did you?
A. No; but I know what the brick cost.
Q. It was a good building, well made and properly built for the size of it, was it not?
A. Yes.
Q. How much was the lot and the building worth after you built upon it?
A. Well, I don't know what after we built on it; but we sold it in 3 or 4 years and got $2,100.00 for it.
Q. The same building and the same lot?
A. Yes.
Q. Had there been any building upon it before you built yours, ever?
A. Yes; they had a meat market there.
Q. When was that built?
A. I can't tell.
Q. What became of it?
A. There was a fire swept all that side of the street.
Q. When was the fire?
A. I don't know the date.
Q. About when?
A. I can't tell anything about when the fire was; before we got it—what time it was burned.
Q. Do you know how much Mr. Ives paid for the building?
427 A. Don't know anything about it.
Q. Do you remember that he told you how much he paid?
A. No.
Q. Were you in Amboy in 1860?
A. Yes.
Q. How much was that lot, building, and all worth then?
A. Not anything, I guess.
Q. Why do you say that?
A. It seemed to be a waste place—not occupied.
Q. Was not there a building then upon it?
A. Not as late as 1860.
Q. When was the building put there?
A. We built in 1865.
Q. When was the old building put there, and when was it burned?
A. I can't tell you anything about that.

Q. If the old building was there in 1860 and in use, the property was worth something then, wasn't it?
A. I don't know.
Q. Why don't you know?
A. For the reason it didn't trouble me any.
Q. It may have been worth a considerable, may it not?
A. Yes.
Q. Did you ever rent the building after you built it?
A. Yes.
Q. What rent did you get for it?
A. $300 a year.
Q. Was that the highest?
A. Yes.
Q. It was in a good location, was it not, this lot?
A. Pretty good.
Q. Well, it was as good as there was in Amboy, wasn't it?
A. No.
Q. Didn't you think so when you had it?
A. No.
Q. Didn't you ever tell anybody so?
A. No; I don't remember.
Q. Didn't you tell the man so to whom you sold it?
A. No.
Q. It was on Main street, was it not?
A. Yes.
Q. Post office had been kept there?
A. Yes.
Q. It was in *in* a handy portion of the town, wasn't it?
A. Yes.
Q. It was near to the depot?
A. Yes; on Main street.
Q. It was near to the corner of the avenue, which is the principal street running perpendicular to Main street, wasn't it?
A. Yes.
428 Q. How far is it from the avenue?
A. About a block.
Q. Is there any street between it and the avenue running north and south?
A. Yes; Main street.
Q. Is there any street running north and south between that building and the avenue?
A. Jones street.
Q. Don't Jones street and the avenue come together at Main street, near this building?
A. Opposite.
Q. Opposite?
A. Yes, sir.

Redirect examination:

Mr. BARDWELL: Did you own to the corner and including the corner of the lot?

A. Yes, sir.
Q. What street lay north of the lot?
A. Main street.
Q. Did you own to and including the corner of the lot nearest the railroad?
A. Yes, sir.
Q. That would be the northwest corner, would it not?
A. Yes.
Q. Where did you get the money with which you paid Mr. Ives for the lot?
A. Why should I have to answer such a question as that?
Q. My reason for asking the question is that it may have something to do with your recollection as to the amount you paid. If you have no objection I would like an answer to it.
A. The old country.

ANN McMAHON.

Subscribed and sworn to before me this twelfth day of June, A. D. 1886.

JAMES F. SANDFORD,
Special Examiner, Commissioner.

429 EDWARD ANTOINE, a witness produced on behalf of the complainants, being duly sworn, testified as follows:

Examined by Mr. BARDWELL:

—. What is your name, age, occupation, and place of residence?
A. Edward Antoine; 56 years old; I am a farmer; Amboy township.
Q. How long have you resided in Amboy township?
A. Ten years.
Q. Did you ever reside in the town of Lee Center, in Lee county?
A. Yes.
Q. How long did you reside there, and during what years?
A. Well, I moved there in 1870; four years.
Q. On what farm did you live while in Lee Center township?
A. On my own place.
Q. Did you live in the town of Bradford, in Lee Co.; and, if so, during what years?
A. Yes; well, can't exactly remember; when I came first to this country I stopped in Bradford.
Q. State, as near as you can, during what years you resided in Bradford.
A. I been in this country—be 30 years next May.
Q. On what farm did you reside in the town of Bradford?
A. I come there and worked by the month for Mr. Leepy. I worked for Mr. Leepy two years.
Q. Did you reside on the farm known as the Henry Clapp farm?
A. Yes, sir
Q. When did you move on the Henry Clapp farm?
A. Well, I worked twenty acres of that land in 1868, and I moved

on the Ed. Shaws place, joining Henry Clapp, in 1869. I worked two hundred acres of that land from Henry Clapp.

Q. How much of the Henry Clapp farm was under cultivation in 1868?

A. He had 360 acres under cultivation.

Q. What did he raise on the farm that year?

A. Well, I raised barley, oats, corn, and wheat.

Q. Do you mean in 1868?

A. 1869.

430 Q. My question is, what did he raise in 1868?

A. Barley, oats, and corn and wheat.

Q. What was his financial circumstances and condition in 1868?

Mr. Bethea objects as improper in rebuttal, being immaterial, irrelevant, and incompetent.

A. Well, in 1868 he had a horse and buggy; that is all I see around him that year.

Mr. BETHEA: That is, in 1868?

A. Yes.

Q. Do you know whether or not he was able in 1868 to pay his debts that he was owing in the neighborhood?

Mr. Bethea makes the same objection.

A. Well, I don't know anything about that year at all.

Q. Do you know anything about his financial circumstances and condition in 1869?

Mr. Bethea makes the same objection.

A. In 1869 he asked me to take him around in my buggy, and I asked him to pay me for it, and I didn't get my pay for it.

Q. What deal of business did you have with Mr. Clapp the year that you worked the 20 acres?

Same objection made by Mr. Bethea.

A. I rent that twenty acres from Henry Clapp himself.

Mr. Bethea objects to the answer as not responsive.

Q. Who worked the rest of the farm in 1868, the year when you rented the twenty acres?

A. Jerry Tondreau.

Q. Where did Henry Clapp live in 1868 and 1869?

A. He lived on the farm.

Q. Do you know what he did with the crops raised on the farm in 1868 and 1869?

431 Mr. Bethea makes the same objection.

A. Well, I pay him the cash for my 20 acres, and the rest was on third.

Q. Do you know what he did with his share of the crop in 1868?

Mr. Bethea makes the same objection.

A. Mr. Chadwick came after the third.

Q. Who got the landlord's share in 1869?
A. Mr. Chadwick.
Q. Do you know where the landlord's share was marketed in 1868?

Mr. Bethea makes the same objection.

A. I hauled some of that corn off myself for Mr. Chadwick.
Q. To what place did you haul it?
A. Ashton.
Q. Where was the landlord's share of the crops of 1869 taken to?

Mr. Bethea makes the same objection.

A. In 1869 some of it was taken to Ashton and some to Amboy.
Q. Who was it delivered to in Ashton?
A. Fellow by the name of Lovejoy.
Q. Who was it delivered to in Amboy?
A. To Mr. Merrigold.
Q. Did you help haul the landlord's share of the crop in 1869?
A. Yes; I hauled some in both places.
Q. Was any of the landlord's share for 1868 hauled to Lee Center?
A. No; I don't remember.
Q. Was any of the landlord's share for 1869 hauled to Lee Center?
A. No; what I hauled myself I took to Amboy and Ashton. I took some to both places.
Q. For whom did you haul the landlord's share to Ashton and Amboy?

Mr. Bethea makes the same objection.

A. For Mr. Chadwick.
Q. Who, if any one, paid you for hauling it?
A. Mr. Chadwick paid me for hauling.
Q. Did he pay you for the hauling both years?

Mr. Bethea makes the same objection, and that it is leading.

432 A. Yes, sir.
Q. Was any of the landlord's share of the crops of 1868 and 1869 left or stored on the place?

Mr. Bethea makes the same objection.

A. No; they had no granery there at all.
Q. Had they any corn-cribs?
A. No.
Q. Was any hay cut on the place in 1868 and 1869?
A. Yes.
Q. What was done with the landlord's share of the hay those years?
A. I can't tell.
Q. About how much hay did the landlord receive in 1868?
A. I can't tell.
Q. State as near as you can.

A. I cut hay on Ed. Shaw for myself, and I don't know on his land at all.

Q. Can you state about how much hay was cut on the place in 1869?

A. No; I can't.

Cross-examination:

Mr. BETHEA: How many times have you been a witness against the Chadwicks in their litigation over this land?

A. But one time.

Q. Where was that?

A. That was some time last fall.

Q. What years did you live on the Chadwick farm?

A. 1869.

Q. Were you there in 1868?

A. No; I was not.

Q. And in 1869 Mr. Chadwick claimed the rent?

A. Yes, sir.

Q. Did you work any of the land in 1868?

A. Yes.

Q. How much?

A. Twenty acres.

Q. What kind of land?

A. Was pretty good land.

Q. What kinds of crops?

A. Wheat.

Q. You rented it of Mr. Henry Clapp?

A. Yes, sir.

Q. On share or money rent?

A. Money rent.

Q. How much?

A. Four dollars an acre.

433 Q. When did you pay it?

A. I paid him $40.00 in advance.

Q. Paid who?

A. Mr. Clapp.

Q. When did you pay it?

A. I paid him $40.00 in advance.

Q. Paid who?

A. Mr. Clapp.

Q. When did you pay the rest?

A. After threshing.

Q. Where?

A. I paid it to Henry Clapp.

Q. And that is all the renting of the land you did in 1868?

A. Yes.

Q. You understood that Mr. Clapp controlled and owned the farm, then, in 1868—at least he rented you a portion of it then as the owner?

A. No; he was not claimed to own the farm that year at all.

Q. Who did claim to own it?

A. Mr. Chadwick.
Q. Was that after Mr. Chadwick had got a deed for it?
A. Mr. Chadwick claimed to have a deed before that time.
Q. Couldn't you be mistaken about that, and couldn't it be that he claimed to have the deed after March 1st, 1869?
A. The way I come to rent that land I saw Mr. Clapp one day and he told me he had 20 acres of land he wanted to rent to me. I went to Lee Center to see Mr. Chadwick, and asked him if I rent that land from Henry Clapp if I would be all right. He told me yes.
Q. That is all he said about it?
A. He told me if I paid Mr. Henry Clapp I would be all right.
Q. You are sure that was in 1868?
A. Yes, sir.

Redirect examination:

Mr. BARDWELL: How did you happen to see Mr. Chadwick on the subject?
A. Well, because I heard he was the owner of the land?
Q. Do you remember from whom you heard it?
A. I don't.

Counsel for complainant, having overlooked one subject on direct examination, desires further to examine the witness.

434 Q. What were Henry Clapp's habits as to temperance or sobriety during the years you knew him prior to 1869?

Mr. Bethea objects, as it is improper at this time, incompetent, irrelevant, and immaterial.

A. Well, he was drinking pretty hard those two years I worked that land there. He was drinking pretty heavy.
Q. What do you mean by that?
A. He came there several times in the night and bothered the family to get into the house. He came there one time and won't give me time to open the door—busted the door open.
Q. How frequently was he intoxicated—in intoxicated condition—in 1868, as near as you can remember?
A. About drinking?
Q. I mean how frequently was he drunk?
A. He was there all the week—was drunk all day long.
Q. What month was it when he was in that condition?
A. It was in March.
Q. March of what year?
A. 1868.
Q. Do you remember of his being drunk in the fall or winter of 1868 and 1869?

Mr. Bethea makes the same objection.

A. Well, in 1869 was the year I was on the farm, and he was drunk every little while. He come there several times, and finally I get

tired of him and opened the door and forbid him to come there again, and he never did come.

Q. Do you remember of his being drunk the first winter after you rented the 20 acres?

Mr. Bethea makes the same objection.

A. I don't know, because I was not near the place at all.

Q. Who lived with Henry Clapp in 1867 — 1868?

A. Jerry Tondreau was living in the same house with him.

Q. Who composed the Henry Clapp family in 1868?

435 A. He had no family there at all, only his wife and himself.

Q. Do you remember whether Fletcher Clapp lived there with Henry Clapp in 1868?

A. No.

Q. Did Fletcher Clapp live with Henry Clapp any time after you first rented the land?

A. No.

Q. Did you know Fletcher Clapp then?

A. Yes.

Q. Where did you see him or meet him in 1868 or 1869?

A. He was in the East in 1868; that is my memory.

Q. Did you see him in 1869?

Mr. Bethea objects as leading.

A. Yes; I saw him in 1869, in August.

Q. Where was he then?

A. He was on the farm. He was home all that summer. I am going to tell you the truth.

Q. Was he home in the spring?

A. No; I only say what I know about it. I took Mr. Clapp and his wife to Mendota to look after that boy Fletcher in July.

Q. July of what year?

A. 1869; that year I was on the farm.

Q. Didn't Fletcher go East in the spring of 1869?

Objected to as leading by Mr. Bethea.

A. I don't remember. I know he went, but can't say what year he went. What I know about it: I took Mr. Clapp and his wife to Mendota to look after the boys; went after him and did bring him back.

Recross-examination:

Mr. BETHEA. You are sure that in July, 1869, Fletcher Clapp came back from the East?

A. Yes, sir.

Q. How long had he been gone?

A. I couldn't tell you.

Q. More than a year?

A. I could not say, because that boy was kept shut up; nobody could see him at all.

Q. Was he there on the farm in 1868?

A. I can't tell you.

436 Q. Did you not say in your redirect examination that he was not there either of the two years you worked the land until the summer of 1869?

A. Yes; I never saw the boy at all.

Q. What time did you go on the farm—what month in 1869?

A. I moved there in the spring.

Q. 1st March?

A. I guess so.

Q. Did you see Fletcher Clapp there?

A. No.

Q. Did you at any time on the 1st of March or any other day in March, 1869, see Fletcher Clapp go with his parents to Chadwick's, in Lee Center?

A. No.

Q. Did he go with them to Lot Chadwick's, in Lee Center, on the 1st of March or any other day of March, 1869?

A. No, sir.

Q. Did you ever have any trouble with Lot Chadwick?

A. Yes.

Q. You didn't feel right towards him, do you?

A. I didn't feel right towards him——

Q. Answer the question yes or no.

A. I rent 50 acres of slough there of Henry Clapp, and Mr. Chadwick told me to pay the money to Henry Clapp, and I rent that slough for the year round. After I cut the hay off I had the land joined — that meadow, and I turned my cattle in that meadow, and after he leave the place I went to Mr. Chadwick to pay me for— took Henry Clapp and his wife all over the country wherever they ask me to take them. Mr. Chadwick went on and told me I rent that slough, and he says I never pay any money on it, and he want me to put that on what he owes me for taking Henry Clapp and his wife anywheres they want me to take them. I take them to Franklin; I took them to Ashton, and Lee Center, and Amboy, and all over the country——

Mr. BETHEA: I insist that the typewriter repeat that question.

Mr. Bardwell objects to repeating the question, the witness being interrupted in his answer by counsel for defendant.

437 The examiner here states to the witness that if he has anything farther to say in answer to the question he may now say it.

WITNESS: What is the last word I say there?

Mr. Bethea objects to the witness asking for the last word said.

WITNESS: Well, I told Mr. Chadwick I give my note to Henry Clapp for that meadow. Henry Clapp went and sell that note to Jno. Andrus at Ashton, and I told Mr. Chadwick the way it was, and he sue me for ninety dollars. He sue me there before Mr. Bodine, in Lee Center, and when I came there to Lee Center I asked

for a change of venue. When Mr. Chadwick see I was bound to bring the suit to Amboy he drawed the suit back, and that would be the last of it, and they owe me seventy-five dollars for what I took them around.

Mr. Bethea objects to the answer as not responsive. Defendant's counsel protests against the examiner allowing the witness, when the question is simply to be answered by yes or no, to proceed with a long recital or pretended facts that cut no figure in the case.

Examiner would state that he understands that he is appointed merely to take and report the proofs in this cause, and that he has no discretion in the matter, and that he is not to report findings therein, and that *if* it is for the court to say whether the witness' answers are correct or not and not for the examiner.

Examiner's statement objected to by defendant's counsel.

Mr. BETHEA: You have taken considerable interest in this litigation, have you not, and have been anxious to see Lot Chadwick and his heirs defeated?

A. Got no interest in that to make me——

Q. Ain't you anxious to see him defeated?

A. I don't.

Q. Have you any interest in the result of any lawsuit about that Chadwick land?

A. I never had any lawsuit about the land.

438 Question repeated.

A. I told you no.

Q. Has anybody promised you anything if Chadwick was defeated in the lawsuit?

A. No, sir; nobody ever promised me anything.

Q. Didn't Fletcher Clapp or Egbert Shaw promise to pay you for hauling Mr. Clapp around, or for whatever Mr. Clapp owed you, providing they won the lawsuit?

A. Fletcher Clapp told me they was calculated to pay me what they owed me if they win that on that case.

Q. And if he didn't win he was not to pay you?

A. He never said it.

Q. Did he promise to pay you anyhow?

A. He told me he pay me when he can, when he able——

Q. When he won the suit?

A. No; he never say anything about the suit.

Q. Didn't you say just now that Fletcher said he would pay you if he won the suit, or words to that effect?

A. No, sir; I never say that.

Q. You did say he promised to pay you?

A. Yes, sir.

Q. When?

A. When he would be able to do it.

Q. When did he say he would be able?

A. He never told me when he would be able.

Q. You are sure that you didn't say that he would pay you when he won that case?

A. No, sir.

Q. You are just as sure about that as anything else you have sworn to?

A. Anything else I have sworn to I am sure of.

Q. When did he make that promise?

A. Made that promise good many years ago.

Q. How long ago?

A. When he came back. He was away; I don't know where; there was several years I don't know where he was.

Q. Now, answer the question. You know, if you know anything, that it is your duty to answer the question and nothing more, and if you are as honest man, as you say you are, you will do so without running off onto something else simply for the purpose of avoiding answering. When did he make you this promise?

439

A. He promised me that when he came back from Iowa—I am not sure he asked me if I had my pay from these folks.

Q. When did he promise you last?

A. He never said it to me since.

Q. How long ago was it when he promised you last?

A. When he came back from Iowa; some 6 or 7 years ago, I think. I am not sure.

Q. Has not he promised you within the last three years that he would pay that debt if he won the suit?

A. No, sir.

Q. Did not he promise you that when he was talking to you about what evidenc- you could give in the case?

A. No, sir.

Q. Did not you tell him anything about what you knew about the case when he was talking to you about paying you?

A. Well, he spoke to me about this before he have any lawsuit with Mr. Chadwick at all.

Q. Did not he speak to you about it after he had a lawsuit with Chadwick?

A. No, sir.

Q. How did you expect him to pay you as he agreed *when* if he didn't win the lawsuit and have the farm?

A. I don't know.

Q. If there wasn't any lawsuit by him against the Chadwick's estate when he made that promise, why did you say he promised to pay you when he won the suit?

A. He never said anything about that at all.

Q. Did not he promise to pay you a certain amount of money, pretending that it was for something his father may have owed you, if he won the lawsuit, upon the condition that you were to be a witness for him and should testify in such a manner as to help him?

A. No, sir.

Q. Will you swear to that?

A. Yes, sir.

Q. Did you not make a bargain with Fletcher Clapp in the
440 saloon of Michael Rice, of Amboy, about the time the Mink suit was begun, wherein he, if they won the suit, was to pay you a certain amount of money and you were to testify in that suit in such manner as to assist him in their litigation?

A. No, sir.

Q. Did you not have any conversation with him about that time in Mike Rice'- saloon?

A. No, sir. Well, he told me that—he asked me that day, such a day, if I would be ready to come here to Dixon. I told him yes.

Afterwards, on this tenth day of March, A. D. 1886, on the further examination of this witness, at Amboy, Illinois, he testified as follows:

2d redirect examination by Mr. BAR-WELL:

Int. You were asked, on recross-examination, if Fletcher Calpp went to Lee Center in March, 1869, and answered that he did not. He may have gone and you not have known it, may he not?

Mr. Bethea objects to the question as being leading and not proper redirect.

Ans. Well, he was gone in the East at that time.

Int. Do you mean that he was gone in the East in March of the year 1869? Be particular to notice the year—I mean time.

Same objection as to the former question by Mr. Bethea.

Ans. Yes.

Int. Are you sure that it wasn't in March, 1868, instead of 1869?

Same objection as to the last by Mr. Bethea.

Ans. No.

Int. What makes you think that it was in March, 1869?

Same objection by Mr. Bethea.

Ans. Well, I was on Edwin Shaw's farm, and Fletcher's sister come to my place one night. She asked if I would send my oldest son down to Clapp's house to get Fletcher out, and the boys came home and told me Mrs. Clapp wouldn't let him out at all. She told my boys that Mary Shaw would steal Fletcher from us.

441 (Answer objected to by Mr. Bethea as not responsive.)

2nd recross by Mr. BETHEA:

Int. Fletcher was away East in March of the year that you moved onto the farm, was he not?

Ans. Yes; in 1869.

EDWARD ANTOINE.

Subscribed and sworn to before me this tenth day of March, A. D. 1886.

JAMES F. SANDFORD,
Special Commissioner.

442 JOHN A. CARROLL, being duly sworn, testified on behalf of the complainant as follows:

Q. What is your name, age, occupation, and place of residence?

A. My name is John A. Carroll; my age is sixty-five years; my place of residence, Amboy, Lee Co., Ill.

Q. How long have you resided in Amboy?

A. I have resided in Amboy since Oct.—Nov., 1854, with the exception of a year and a half I have been in the army.

Q. Are you acquainted with property in the city of Amboy described as follows: The east eighteen feet of the west thirty-one feet of lot five, block eleven, commonly known as the Market lot?

A. I believe I know it.

Q. How long have you known that property?

A. Ever since I came here—in the winter or the fall of '54.

Q. What, in your judgment, was the value of this Market lot in 1864?

A. Well, that lot—I think there was an old frame building on it about that time or previous to that. I don't know whether it was burned down that time or not. I think—I know I have been in it. In the spring of '55 there was a building there, and it was occupied by the post office—was the post office. A man by the name of Reid was the postmaster at that time. Of course, I didn't take any particular kind of notice, and I would not suppose that the lot and the building would be a great deal more valuable than probably $300.00—$350, it might be, up to $400.

Answer objected to as not responsive to the question, putting the time '55 instead of '54.

Q. State, now, what, in your judgment, was its value in '64. Notice the year to which I refer.

A. The difference in the value of the property I don't think was a great deal, in my opinion. Of course I don't deal much in real estate. I don't pay much attention, but don't think it was in

443 '55—that is, the lot itself. I don't know whether a building was on it in '64 or not. I don't remember when the fire was.

Q. If a building was on the lot in 1864 state what, in your judgment, was its value then with the building on it?

A. Well, sir; I don't think it was. It would not be worth any more than $400 with the building on it.

Q. Do you own any real estate in Amboy?

A. Yes, sir; I own some.

Q. How long have you owned real estate in the city of Amboy?

A. Well, I have owned real estate in the city since in 1855. I bought four lots and built a small house on it; bought a grain-store building about '57, I think. Ever since then I own that property. It is in the third ward. It is in what is called Bailey's Addition. It is out of the city limits. It is not very valuable, but it is in the corporation, and since then, in '80, I bought property right here joining this lot—right here joining this lot right north of here.

Q. How near?

A. Right north of this.

Q. Where have you been doing business since you came to Amboy?

A. I have been within two blocks.

Q. In what year was the Ill. Central railroad built through Amboy?

A. The rolling stock came through Amboy, I think, in Nov. or the beginning of Dec., 1854. It came in Oct., '54. They were laying track at Sublette, and I think it was in Nov., of the latter part, when they came through here or met at Dixon, in the north division, in '54.

Q. Are you acquainted with Martin L. Arnold?

A. Yes, sir.

Q. How long have you known him?

A. Well, I have known him some twenty-eight or twenty-nine years.

Q. Do you know his reputation for truth and veracity in the community in which he lives? Do you know his general rep-
444 utation for truth and veracity in the community in which he lives?

A. As far as I know, it is good.

Answer objected to as not responsive.

Q. Your first answer should be whether or not you know that reputation. I now ask you again, Do you know his general reputation for truth and veracity in the community in which he lives?

A. I do.

Q. What is that reputation, good or bad?

A. It is good.

Cross-examination:

Q. What is your business now?

A. I carry on merchant tailoring business. I am a tailor by trade.

Q. How long have you been engaged in that business?

A. I learned the trade in '35, when I went to the trade first. I have been at it, with the exception of a while between '58 and '66 and part of the time in the army and part of the time I worked at other business. With the exception of that interval, I have been at it all my life, you might say.

Q. Do you know more about tailoring than you do real estate?

A. Yes sir.

Q. You know more about tailoring than you know about Martin L. Arnold's reputation, don't you?

A. Yes, sir; very natural that a man would know more about his own business than he would about others.

Q. How much real estate do you own in this Co. now?

A. I own about six lots; two houses.

Q. How much real estate have you ever owned in this Co. or any other Co.?

A. That is all I own.

Q. How many transactions have you had buying and selling land in this Co.?

A. I have not had any. I bought this property, and I have not sold any.

Q. Don't pretend to know anything, then, particular about the purchasing — selling of real estate in this town?

445 A. Nothing more than hearsay; hear what other people sell for and form an opinion from what property is generally worth by that.

Q. Do you suppose that is the reason that Mr. Arnold got you to come here and testify as to the value of that lot?

A. No; I don't suppose it is, particularly.

Q. Don't you suppose that he got you to come up here and tell what you thought about the value of that real estate because you didn't know anything about it?

A. No; I don't suppose anything of the kind.

Q. You don't buy any real estate or sell any, do you?

A. Never bought that or sold it.

Q. Not any in this town except what you have mentioned?

A. Yes, sir.

Q. That is only two purchases?

A. Yes, sir.

Q. What was the value of any other lot in this town in 1864?

A. Well, there was various value-, according to their location. That is a question that can be considered in various ways. I think the same lot is worth more in one location than the other, the same amount of land. There was lots in this street twenty-five feet front and one hundred and twenty-five feet deep was sold high as $1,500.

Q. Do you remember what lots were sold up this main street in '64?

A. No; I was not here in '64. I was in the army part of the time. I don't know anything about the value of real estate in this town in 1864. Then, not only what I heard from others, those that were bought and sold.

Q. What did you hear was the value of any real estate in this town in 1864; or, in other words, what did you hear any lots on this street in '64 was sold for?

A. I did not hear about it being sold on that year.

Q. Then you don't know anything about it, do you?

A. No; not in that year. I did not in '64.

446 Q. You were asked, were you not, the value of this lot in '64?

A. Why, I answered that.

Q. You answered about something that you did not know anything about.

A. I answered.

Q. The direct answer was, I think, I would not consider it was worth any more than it was in '55. If you were not here in '64 and if no one told you what property sold for in this main street in '64, how can you tell how much any lot was worth in '64.

A. Some folks did tell me when I came home. They told me, of course.

Q. Have you not just sworn that no one told you what property sold for in '64?

A. I believe I answered that way. I said I was told what property was worth; that is the word I spoke, I think. I don't know if any was sold — the value was.

Q. Well, who told you?

A. Well, there was a man working in the railroad shop by the name of Corkline.

Q. What did he tell about the value of property in '64 on Main street?

A. He told me that property was varied in value according to the location of the lot; same was worth 1,000, and some more and some less.

Q. This lot was in one of the best localities in the town, was it not?

A. It was as good now. It was not considered then; was in '64 not considered so.

Q. Why?

A. Because there was no buildings on that side of the street to amount to anything and the property was not considered worth anything.

Q. Was not that on the main street of the town then, as it is now?

A. Yes, sir.

Q. Was not it within a block of the depot?

A. Yes, sir.

Q. Was it not near the corner of what is known as the avenue running along the side of the railroad?

A. Well, sir, it was a block from the corner. The lot was small.

447 —. Which is the lot which you are testifying about?

A. I believe there is a brick building on it at present, owned at present by a man by the name of Hegert.

Q. What kind of building is on it now?

A. A kind of a three-cornered building.

Q. One or two story?

A. One story.

Q. A description of the lot is west eighteen feet of the lot five. Where is the west portion of that lot?

A. The west portion, I suppose. The lot is described as eighteen feet front on Main street. There is a double lot west of it that is bound by the alley running south from Main street.

Q. What building is on that portion of the lot?

A. That double lot is purchased by a party, and the building that is there now stands on both lots.

Q. What kind of building was on the lot in '64?

A. I believe I told you I could not tell anything about whether there was a building on it now. There was a building in '64. I can't tell you whether there was a building in '65.

Q. Was not you here from '64 until after '65?

A. I was not.

Q. Where were you?

A. I was here until I went into the army.

Q. Was not there a building on it when you went in the army?

A. I could not say. I didn't take any particular notice. I was not interested in the property.

Q. What kind of building was it?

A. I can't tell you that.

Q. Was not that a building that cost $600 or $700?

A. I can't tell you, sir; it may have cost that; it may have cost a thousand, for all I know.

Q. How much do you know that lot and building to have sold for?

A. That on the west, double lot, with the brick building, was sold in '66 for $1,800.

Q. Don't you know that it was $2,500?

448 A. I don't.

Q. May it not have been?

A. That was what I was told by the man that bought it and the man that sold; further I know nothing about it.

Q. How much is the building on the lot worth now?

A. I ain't a builder and I can't give you any estimation on the value of that building than I could on the Astor House, in N. Y. I know there is a building on it.

Q. That building did not cost more than $300, did it?

A. What, that brick building; I should like to have one put up for that just like it. There is a good basement to it, and it is a good building, covers the whole of that land, and I should not suppose that the building could be put — short of $1,500 to-day. The one that the man bought for $1,800 was burned down, and he put up another of the same description.

Q. You and Mr. Arnold are pretty good friends, are you not?

A. I am a friend to every man, sir.

Q. You are very friendly with Mr. Arnold, are you not?

A. No; not to any undue friendship.

Q. Why ain't you very friendly with him?

A. I say I am friendly with every man.

Q. You are a friend with everybody, whether he is a scoundrel or not, are you?

A. I like to use my fellow-men right and I like them to use me right.

Q. You don't know whether he is a scoundrel or not?

A. I am not acquainted with any scoundrels.

Q. Don't you think that there are any scoundrels?

A. Well, lots of them.

Q. You say you are a friend to *of* every man; therefore you must be a friend to scoundrels, must you not be?

A. Certainly; I am to every man; I pass him by civially.

Q. Have you ever done any business for Mr. Arnold?

A. Yes, sir; I made him some clothes sever-l years ago.

449 Q. Any other business?

Q. No, sir; no more than we live in the same town.

Q. Do you owe him anything?

A. No, sir—I will call that back. I just bought some hay of him, and I don't know as I have settled with him or not.

Q. When did you buy his hay?

A. I don't know.

Q. When did you settle? How much did you pay him for it?

A. I did not settle that yet.

Q. Did he make you a present of it?

A. No, sir; I don't take any presents of any man. I always calculate to pay.

Q. Do you always pay?

A. Yes, sir.

Q. What do you mean by reputation?

A. His general character, I suppose.

Q. What makes reputation?

A. Well, I don't know; probably I am not grammarian enough to answer these questions.

Q. What do you mean when you say that you know his general reputation for truth and veracity?

A. I mean as far as I am acquainted with the man and have dealings with him, and when I find that he tells me the truth and deals fair — honest with me *and* I consider he has a good reputation.

Q. That is the meaning you take of it? You don't mean, then, what people say about him?

A. That has no meaning with me.

Q. In testifying here as to his truth and veracity you are not testifying as to what people generally say about him, but to what you know of him yourself?

A. Certainly.

Q. Counsel for the defendant ask to have the testimony on reputation stricken out.

Q. Did you ever hear anybody talk about him being an untruthful man?

A. No more than any other man.

450 Q. Did you ever hear anybody say that he was untruthful?

A. I don't remember.

Q. Will you swear that you didn't?

A. If I did I did not take any notice of it—not more than I do any other man. Then folks could say I was untruthful, too, but I would pass it by and not take any notice of it.

Q. Did you ever hear anybody say that?

A. I don't know whether I did.

Q. Didn't you hear that Mr. Arnold had been impeached in the trail of several lawsuits in this town and in Dixon?

Objected to as untrue in fact.

A. No; I never did hear that he was impeached.

Q. Do you know what I mean by impeached?

A. Well, no; probably I don't know what you mean.

Q. Did you ever hear that in said several suits in this Co. witnesses from Amboy came and swore that Martin L. Arnold's rep-tation for truth was bad?

A. I didn't hear it, sir.

Q. Did you ever hear that in certain cases John C. Jacobs, Josiah Little, Henry Badger, Chester Badger, —— Adams, Chas. Bell, and a great many other citizens of Amboy swore that Martin L. Arnold's reputation for truth was bad?

Objected to as not embracing what is true in fact.

A. No; I never heard anything about that.

Q. Did you ever hear that he had lawsuits?

A. No; I haven't had any opportunity of knowing anything about the man's buisness more than any other neighbor's. I have never been in law buisness any myself.

Q. You don't know what people say in this town about their neighbors?

A. I don't pay a great deal of attention to it.

451 Q. The majority of the people in this town may say that Martin L. Arnold's reputation for honesty is bad, and they wouldn't believe him under oath as far as you know?

(Question repeated.)

A. They might say the same of me.

—. Answer the question; yes or no.

A. Why, that would not affect me as far as my dealings with him is——

(Question repeated.)

Q. Did you ever hear of his lawsuits with heirs of Allen Willcox?

A. I heard of it; yes. That is all I do know about it.

Q. Did you hear in that case that he presented a forged receipt against the estate?

A. I heard that he presented it.

Objected to as untrue in fact and assuming that he presented what is unwarranted.

A. I heard that he presented a releasc for the note that Mr. Wilcox held and it was objected to, but what became of it or what it amounted to I never inquired and never knew anything about it.

Q. Didn't you hear that they proved that to be a forgery and brought witnesses to testify that his reputation for truth was bad?

Objected to as untrue in fact.

A. I heard about the lawsuits that he had and heard that it went against him, and that is all I know about it. I never inquired anything about it.

Q. Do you think a man's reputation for truth and veracity is good whom you have heard was defeated in a lawsuit wherein he presented a receipt which was proven to have been forged?

Objected to as entirely unwarranted in fact and simply offering to the witness opinions on untrue statements.

(Question repeated.)

452 A. Well, I don't never form my opinion about men's reputation just on the ground of other people's opinion at all; as far as that is concerned he might have been wronged. It don't go to show always that — a man is defeated in a lawsuit that he is wrong in *any* my estimation. Sometimes a man is defeated in court out of his rights, and shamefully, too.

Q. Did you hear about him being a witness in the case of Edwin Clapps against Lot Chadwick at Dixon?

A. No, sir; I don't know them people.

Q. Did you hear in that case that Martin L. Arnold was a witness and twelve of the best men in Amboy came and swore that his reputation for truth was bad?

Objected to as untrue in fact.

A. I have heard of that.

Q. Did you hear that in a case between him and Cephas Clapp fifteen or twenty of the best people of Amboy swore that they would not believe Martin L. Arnold under oath?

Objected to as untrue in fact and as giving counsel's own judgment as to *what* who the best people of Amboy are.

A. I have heard that before.

Q. If you had heard that Josiah Little, Wm. B. Andrews, John C. Jacobs, Henry Badger, Chester Badger, Charley Bell, Henry Adams, and several other as good men have sworn that Martin L. Arnold's reputation for truth was bad in at least a half a dozen cases, could you then have testified that his reputation in this Co. was good in this respect?

Objected to as based upon an untruth, and the counsel must know it to be untrue.

A. That question, if I understand it right, has nothing to do with my case at all. That don't make any difference with me and

453 Martin Arnold, what other people think—what other people swears to. I don't know what they are actuated by in so doing; consequently I go on my own personal knowledge. I don't swear what other people know or think.

Q. Suppose the law required you to swear upon that what other people know upon this subject, would you be influenced by these men as much as anybody?

A. I don't know as I would.

Q. Don't you think the men I have named are pretty respectable men in this Co., as good as any dozen men you could find now?

A. I suppose they are.

Q. If they had said that your reputation was not good would you believe that?

A. They said so I would not be obliged to believe them. I would not doubt that they were candid in that opinion. I dare say they do know I would dispute that.

Q. You would not know what their object would be unless you think that the people in this Co. said his reputation was bad?
A. They don't comprise a majority.

Redirect examination:

Q. Are there no other men in Amboy just as good and just as reliable as the gentlemen who have just been named to you?
A. Is that to me? Yes, sir; plenty of them.
Q. Are there not dozens of them?
A. Yes, sir; I would say one hundred just as good and just as reliable.

Recross-examination:

Q. Martin L. Arnold cannot get them to come here and swear that his reputation is good, can he?
A. I don't know what he can do.
Q. Did you say that you could find dozen other men in this town better than the names I have given to you?
454 A. I didn't say.
Q. You don't want to say?
A. I don't want to class any man any further than any other man, just as far as his veracity or truth is.

AMBOY, ILLINOIS, *May 18th*, 1886.

On the foregoing testimony being read to the witness he further testified as follows:

In answer to interrogatories by counsel for complainants:

Int. I have asked you as to the value of the Market lot in 1864. Please state now what, in your opinion, was its value in 1860 with the building then standing on it.

(Question objected to by defendants' counsel because it don't appear that witness knows anything about it.)

Ans. Well, sir, I don't remember anything about it, what it was worth in 1860.
Q. Was it more or less, in your opinion, than in 1864?

(Same objection by defendants' counsel.)

Ans. I couldn't tell; haven't any knowledge what it was worth.

JOHN A. CARROLL.

Subscribed and sworn to before me this eighteenth day of May, A. D. 1886.

JAMES F. SANDFORD,
Special Commissioner.

455 JEREMIAH H. HAZEN, the witness produced on behalf of the complai-ant, being duly sworn, testified as follows:

Q. What is your name, age, occupation, and place of residence?
A. You have got the name; my occupation—I suppose you mean simply a profession?

Q. That is —.

A. Been a minister of the gospel; age, sixty-two years old; place of residence, Amboy, since June '65.

Q. Are you acquainted with Martin L. Arnold?

A. I am.

Q. How long have you known him?

A. I think Mr. Arnold was one of my first acquaintances when I first came to the city, in '65—one of the first acquaintance- which I formed.

Q. Do you know his general reputation for truth and veracity in the community in which he lives?

A. I do; I know it; I do.

Q. What is that reputation—good or bad?

A. Good.

Q. Of what denomination have you been and are now the minister?

A. The Baptist denomination.

Cross-examination:

Q. Was Arnold a member of your church?

A. No, sir; never has been since I have been pastor. I don't know whether he was before or not.

Q. Are you acting pastor now?

A. No, sir.

Q. How long since you ceased to so act as pastor of the church here?

A. Since '71—'70. I broke down in the winter of '70. I have not been serving as pastor since.

Q. How long were you pastor here?

A. From '65, nearly; (5) five years, or nearly so.

Q. How intimate are your relations with Arnold?

A. Well, as neighbors, I can't say anything further than common friendship and neighborly intercourse, living in the same
456 town, within a block of each other for five years. Six years since that time I have been at this place, and he has been at the other end of the town.

Q. Have you ever done any business with him?

A. I have.

Q. What?

A. Insurance.

Q. What else?

A. Not anything. I think now of nothing.

Q. Does he owe you anything?

A. No, sir.

Q. Do you owe him anything?

A. No, sir.

Q. Is there any business relation existing between you now?

A. No, sir.

Q. What do you mean by reputation?

A. What do I mean by reputation? I mean character and standing in the community. That is all there is about it.

Q. What do you mean by general reputation?

A. Well, general reputation would be the general opinion that people has of him, I suppose; the best definition that I could give.

Q. Have you heard people talk about his truthfulness?

A. I have not.

Q. Did you ever hear his truthfulness discussed—called in question?

A. No, sir; I never have.

Q. How long have you been confined to your house?

A. About seven years, nearly so.

Q. You don't get out among the people?

A. Well, I have not for the last five years. The last five years I have not been outside, I guess, but a few times.

Q. Your eyesight is bad, you say?

A. I have no eyesight—that is, I have very indistinct, very imperfect; that is, all within the last five years, both the sight and the hearing.

Q. You have lost the use of one of your limbs?

A. Yes, sir; one side.

Q. You have not, then, from that period known what
457 the people in this town are saying about each other?

A. No, sir; not as a matter of course. I have been confined to my house and they don't come to talk to me about such things. I know nothing.

Q. You don't know what the people in this Co. has been saying about Martin L. Arnold for seven years?

A. No, I did not say that; five years.

Q. Do you suppose that that is one reason why Mr. Arnold wants to take your testimony, because you have not heard for five years what people were saying about him?

A. No, I don't think any such thing.

Q. I understand you never have heard his reputation for truth or his untruthfulness discussed one way or the other at all?

A. I have never heard it.

Q. You never heard anybody say that he was truthful or untruthful?

A. As far as his general reputation is concerned, never had an opportunity.

Q. Don't you think that he has had considerable litigation the last few years?

A. Well, I have heard of him having lawsuits with Dr. Irwin in regard to a horse. I remember hearing lawsuit with him about a horse. I remember hearing, at least, his having a suit in reference to Mr. Clapp's estate or something of that kind. I know nothing about it particular.

Q. Did you hear about a suit with Allen Wilcox's estate?

A. I remember that.

Q. With Cephas Clapp?

A. Is that the old man?

(BETHEA:) The old man is dead now?

A. Yes.

Q. Do you know in those cases witnesses were produced who testified that his reputation for truth is bad?

A. No, I don't. I had no opportunity.

Q. Did you hear that in the Wilcox's case he presented a receipt for money or a release from mortgage which they claim was a
458 forgery and which the court afterwards found was a forgery?

A. The latter part. I did — know anything about what the court found; I know that such a charge had been made. A piece of writing was sent to me and my judgment given upon it before I became blind, and I believe the document was genuine and so testified, and I have not had any reason to change my mind since; have had no occasion for it.

Q. Did you hear that the court found against Mr. Arnold in that case?

A. Not heard.

Q. Did you hear in that case that a great number of witnesses testified that his reputation for truth was bad?

Object- to as untrue in fact.

Q. Did you hear that in the case of Lot Chadwick against Edwin Clapp, in the circuit court of this Co., Mr. Arnold was a witness; that Wm. B. Andrus, Josiah Little, John C. Jacobs, Henry Clapp, Henry Adams, Chas. Bell, Henry Badger, Chester Badger, and a great number of other citizens of Amboy testified that Martin L. Arnold's reputation for truth and veracity was bad?

Objected to as untrue in fact.

A. No, sir.

Q. Did you hear that in the case between Cephas Clapp, where the note was presented against Arnold and Arnold swore that he had paid it, Mr. Clapp was at home sick, unable to be there, and no witnesses were produced but the note, and that these same gentlemen that I have mentioned, together with others, testified that Martin L. Arnold's reputation for truth was bad, and that the jury found in favor of the note?

Objected to as untrue in fact, not only as to other witnesses that are spoken of, but as to the fact of Mr. Clapp being sick and absent.

A. I say I never heard anything about the note and know nothing about that, and, as I stated before, I never heard anything in regard to these men's testimony until you have mentioned it.

459 Q. Did you hear that in the case that Arnold had against the Ill. Central Railroad Co. that the Co. produced at least fifteen reputable citizens of Amboy, including the names I have mentioned, to swear that his reputation was bad?

Objected to as untrue concerning the reputation in fact.

A. I didn't know that he had a suit with the railroad.

Q. If you had known that these men I have named, with others, had at least in five cases testified that Martin L. Arnold's general reputation for truth and veracity in this community was bad, and

that some of them would not believe him under oath, could you have said then that his general reputation was good?

A. I could, in fact, that I had never heard anything from the community.

Q. If you had heard something?

A. If I had heard they had done so I don't think that would have any effect upon me. I think that I had as good an opportunity as they had—that is, up to a certain length of time—that is, the last five years; I knew nothing up to that time; that has no effect on my mind, so far as the man is concerned; I know as well in twenty years as either of those gentlemen did.

Q. You say that general reputation is made up from the speech of the people. Now, if fifteen reputable citizens of this town swears that his general reputation for truth is bad could you swear that it was not?

A. I don't think that I am under obligation to make up my mind from any one man—from the testimony of any other man — my own personal knowledge.

Q. You are testifying now to your personal knowledge of the man?

A. My personal knowledge of the man and his standing in the community. About a dozen or fifteen or twenty has testified in reference to him and they come to me and I am not to make up my mind or give my evidence on any such grounds; I can't do it.

460 Q. Would you believe what Wm. B. Andrus said about it?

A. You asked me what reputation was and I gave that what is general reputation, as far as I know, and I had a good chance to know as any other man, and I believe his reputation to be good, and I have no reason to take back what I have said simply because others may have testified differently. That is something that I know nothing about.

Q. You can't know very much about it. You — not know, would you, whether these people have testified as I have stated?

A. Why, of course I don't know anything about what they have testified until you told me what they have testified.

Q. My question is, if you had known the opinion of those men in reference to Arnold, could you have sworn that his reputation was good—that is, if the people said that he was untruthful?

A. Well, I think I have answered the question as definitely as I could answer it.

Q. You would have believed what those men said in regard to his general reputation?

A. I say, just as I have said before, I could not see simply because other men have testified to the fact that his reputation was not good that I should form my opinion upon what they have testified. From my knowledge of the man is the only grounds upon which I base my evidence. That is good.

Q. You believe that what they said about his general reputation, but would only keep your judgment of his truthfulness yourself, and you base your statement upon your own judgment of his truthfulness?

A. That is the only grounds upon which I have based.
Q. He never told you any lies?
A. I know it, nor never heard that he had told or sworn to lies.
Q. You have not done much buisness with him?
A. No; I don't know as I have.
461 Q. There has been no occasion for him to lie, has there?
A. I don't know as we ever had any buisness to call up any cause.
Q. You don't know whether he would lie or not if he had a cause?
A. I don't know. I can't tell what a man would do.
Q. If it was to his interest to lie you don't know but what he would, do you?
A. No, I don't believe any such thing and I could not make up my mind to any such statement as that.
Q. If he should make up his mind and swear to it?
A. I don't believe it.
Q. Why?
A. Because from the knowledge I have had for the last twenty years.
Q. You say there has never been an occasion for him to tell a lie?
A. No more than for other neighbors to tell a lie who transact buisness with me.
Q. Don't you think you are pretty charitable in your judgment of men?
A. Probably I am. I always calculate to judge (interrupted)——
Q. You think charity is the best virtue of men?
A. I don't think that charity covers iniquity. I don't think that is charity.
Q. You don't think that charity covers a multitude of sins?
A. I don't think that is the kind of charity that we are called upon to exercise.
Q. Was Mr. Arnold a member of any church?
—. I never knew that he was.
Q. I guess, a- far as it is concerned, you know nothing about what he has been?
A. About his church relations—I knew he was not a member of the Baptist Church when I first came.
Q. Did he attend church?
A. Yes, sir.
Q. Did his family belong to church?
A. I think his wife did.
Q. Did he help support the church—did he pay his part?
A. Well, that is a matter that I know nothing about; that is a matter that belongs to the trustees.

JEREMIAH H. HAZEN.

462 Subscribed and sworn to by Jeremiah H. Hazen before me this eighteenth day of May, A. D. 1886.

JAMES F. SANDFORD,
Special Commissioner.

FRANK P. FISH, witness produced on behalf of the complainant, being duly sworn, testified as follows:

Q. What is your name, age, occupation, and place of residence?

A. Age, thirty-five years old; occupation, plow-maker; I work for the Ill. Central now; residence, Binghampton; name, Frank P. Fish.

Q. How long have you resided in Binghampton?

A. I have resided there since the spring of '67.

Q. Are you acquainted with Martin L. Arnold?

A. Yes.

Q. How near him have you resided since '67?

A. Well, I have resided within a mile and a half, I presume, and for the last year or so about eighty rods, I think; it might be a little more than one hundred rods, ain't it, Martin, from my place over to yours, now?

Q. How long have you been acquainted with him?

A. Well, I can't say; several years.

Q. Were you acquainted with him when you moved to Binghampton?

A. No, sir.

Q. Do you know his general reputation for truth and veracity in the community in which he lives?

A. It is good.

Objected to as not responsive.

Q. You are first asked to state whether you know his general reputation for truth and veracity in the community in which he lives?

A. I can't answer in any different way as I know of. From the dealings I have had with him he has always been honest with me.

463 Q. State now, if you can, whether you know his general reputation for truth and veracity in the community in which he lives.

A. I can't answer that question any different. I am occupied in the shop. I ain't out and around much.

Q. Have you ever heard his reputation or character for truth and veracity in the community in which he lives questioned or talked about?

A. I have.

Objected to.

Q. How?

A. Well, I heard Mr. Adams speak about it once, I believe. That is the only time.

Q. What Adams?

A. Henry Adams.

Q. Have you ever heard any one else speak of his character for truthfulness and veracity?

A. I can't say.

Q. Do you remember of hearing any one else speak on the subject?

A. I could not say that.

Q. If you can remember any other person whom you have heard speak on the subject please name him.

A. I have no recollection, because I have no dealings or talk with people outside. Mr. Adams was at my house, you know, and the matter was brought up, and we spoke about it.

Q. Who spoke about it first, he or you?

A. I can't tell as to that.

Cross-examination:

Q. Are you any relation to W. I. Fish?

A. I am.

Q. What?

A. Half brother.

Q. You say you don't know Martin L. Arnold's general reputation for truth?

A. I don't know. I have had some dealings with him. That is all.

Q. What did Henry Adams say about his truthfulness?

Objected to as incompetent on a cross-examination.

A. Well, I could not tell you just what was said, only he would not believe him.

Q. Did he say he would not believe him under oath?

A. I think so. I would not swear positive.

464 Q. Did you ever hear anybody else say that they would not believe him?

A. Mr. Adams is the only one I ever heard say anything about it. I don't talk with my neighbors.

Q. You never had much dealings with Mr. Arnold—never had occasion to know whether he would be upright or not?

A. I have bought stuff of him.

Q. And he was truthful?

A. Yes, sir.

Q. You never had any trouble with him?

A. No, sir.

Redirect examination:

Q. *Has* the Henry Adams you have spoken of the one that has already been a witness in this case and who is constable here in Amboy?

A. I can't tell you about witness, but he is constable here.

Q. Do you know any other Henry Adams in Amboy?

A. No, sir.

Recross-examination:

Q. Henry Adams also was one of — editors of the Amboy News, and proprietor, was he not?

A. He used to be.

FRANK P. FISH.

Subscribed and sworn to by Frank P. Fish before me this sixth day of August, A. D. 1886.

JAMES F. SANDFORD,
Special Commissioner.

465 LEMUEL BOURNE, witness produced on behalf of the complainant, being duly sworn, testified as follows:

Q. What is your name, age, occupation, and place of residence?
A. Age, fifty-six; occupation, merchant—dealer in the general way; place of residence, Amboy.
Q. How long have you resided in Amboy?
A. About thirty-two years.
Q. Have you been engaged in active mercantile business here during those years?
A. Not all the time; about eight years I was railroading.
Q. Were you in the mercantile business from '56 until '69 or '70?
A. '66; yes, sir.
Q. Are you acquainted with Henry Clapp?
A. Yes, sir.
Q. How long have you known him?
A. Well, I think I have known him ever since I have been in the country—some thirty years or more, I think. He was here when I came here.
Q. What was his financial standing from '66 until '70?
A. Well, his credit was very poor in this town. I never knew him having anything except that place up there. His credit was below par.
Q. What do you mean by saying that it was below par?
A. Well, I don't know anybody that would trust him that knew him.
Q. What was his habit during those years for sobriety?
A. Well, he was always a hard drinker, and since he has got to be a hermit I don't know whether he drinks now or not.

Cross-examination:

Q. What was the time you said—from '66 to '70?
A. I would qualify that a little more. I could not say from my own knowledge that he was around here during those years. I don't know as I have anything that I could guide myself. I know he had been off a little.
Q. You don't want to say from '56 to '70 that his financial reputation was bad or that he was a drunkard?
466 A. I don't — to say, for I am not sure that he was around in this vicinity at that time.
Q. What relation are you to Clapp or the Shaws?
A. I don't know as any.
Q. Some relation to the Shaw's family?
A. No, sir.
Q. Some relation to Mr. Clapp's children, some way?
A. No; my wife is related.

Q. What relation is your wife?
A. Henry Clapp is an uncle of hers.
Q. What was your wife's name?
A. Smith.
Q. You knew that before 69—that Mr. Clapp had a legal or equitable title for about five hundred acres of land at Bradford?
A. I knew that he had a claim there?

Redirect examination:

Q. Did you ever know of the time when Henry Clapp's financial condition and character for sobriety was any differ-nt from what you have stated?
A. Not since I have known him.
Q. Was such his reputation—his financial condition, character, and reputation—during the years that he has lived in this vicinity and since you have known him?

Objected to as leading.

—. You mean that was his reputation since I have known him? Is it that? That is what I understand by that.
—. Yes; that in substance is my meaning.
A. Well, that is the way; that was my opinion of the man; that is my individual opinion.

Recross-examination:

Q. Other people think that his financial condition was good during the greater portion of the time?
A. As far as I know; I could not, of course, say what other people did.
Q. How long have you known him?
A. I think I have known him since I have been in the Co., about thirty-two years.
467 Q. When you first knew him was not his financial condition good?
A. His credit was not good.
Q. Why?
A. He never paid anything.
Q. Did you ever collect anything of him? Do you know of any judgment that was not collected?
A. I don't know.
Q. Don't you know that there is no judgment standing against him now?
A. I don't know.
Q. There may be one, so far as you know, you never knew of?
A. Not so far as I know.
Q. Never knew a man that attempted to collect a debt of him that failed to collect it?
A. No, sir.
Q. Is not it true, sir, that the reputation that you talk of was made up by the people—his enemies—that was made up for the purpose of effecting his interest in this case or some other case in litigation?

A. I don't know that it effected me in this case or any case.
Q. Any talk about that, as you know of?
A. I have no interest in it whatever.
Q. Can you say, then, his financial condition is bad without you heard any talk?
A. That is my judgment.
Q. You never heard any other judgment on the subject?
A. No, sir.
Q. He was a man that occasionally got drunk. Was he not a man who, when sober, attended to his buisness with ordinary intelligence?
A. I understand that he was a very brilliant and smart fellow in his younger days. That was before I knew him; I have heard that.

Redirect examination:

Q. Is it not true he got drunk more than occasionally?

Objected to — not proper, redirect, leading, otherwise incompetent and immaterial.

A. I know when he came to Amboy he would pretty sure pretty regularly get drunk. I don't know what he did home.
Q. Do you know of any one in the city of Amboy who
468 trusted him or gave him credit any time since '66?

Objected to; the same objection.

A. No; I don't know of any one.
Q. As I understand, you yourself would not have trusted him at any time since the year '66?

Objected to; the same objection.

A. I don't think I should; I should not financially.
Q. What mercantile buisness were you engaged in from '66 on?
A. About that time, I think, I was in the drug and grocery buisness.
Q. What buisness have you been in since leaving that buisness?
A. Dry goods, groceries, provision.
Q. Have you been in those trades during the years mentioned, as proprietor or otherwise?
A. Yes, sir.
Q. What do you mean?
A. As prorrietor.

Recross-examination:

Q. You were not asked to trust him, were you?
A. No, sir.
Q. Do you know of anybody else who were asked trust him?
A. I don't know.
Q. You don't know anything about whether he was trusted or asked to be trusted or not?
A. No, sir.

LEMUEL BOURNE.

Subscribed and sworn to by Lemuel Borne b-fore me this eighteenth day of May, A. D. 1886.

JAMES F. SANDFORD,
Special Commissioner.

469 THOMAS HINES, the witness produced on behalf of the complainant, being duly sworn, testified as follows:

Q. What is your name, age, occupation, and place of residence?
A. Thomas Hines; age, sixty-three; occupation, painter by trade; residence, Amboy.
Q. What office, if any, do you now hold in the city of Amboy?
A. Police magistrate.
Q. How long have you been police magistrate?
A. Well, I was elected a year ago this spring—that is, for police magistrate—but I have been justice of peace two terms previous.
Q. How long have you resided in Amboy?
A. From '54 to the 16th day of Oct.
Q. Are you acquainted with Martin L. Arnold?
A. Yes, sir.
Q. How long have you known him?
A. Oh, I should say ever since I came here.
Q. How near to him have you resided during that time?
A. Within a quarter of a mile, I suppose.
Q. Do you know his general reputation for truth and veracity in the community in which he lives?
A. Yes, sir.
Q. What is that reputation, good or bad?
A. Well, I should suppose it was good, as far as my experience goes.

Objected to.

Q. Are you acquainted with property in the city of Amboy described as the east eighteen feet of the west thirty-one feet of lot five, block eleven, and known as Market lot?
A. Yes; I suppose that is the same lot that Hegert now occupies.
Q. What, in your judgment, was the value of that lot and the building that was on it in '64?

Objected to because it does not appear that he knows the value of property here at that time.

A. About five hundred dollars—four or five hundred dollars.
470 Q. On which side of Main street is it located?
A. On the south side.
Q. How many buildings were standing on the south side of the street in '64?
A. I should think not above four.
Q. Where were most of the buildings and improvements on Main street at that time?
A. On the north side of Main street—on East avenue.

Q. What were the buildings then standing on the south side of Main street used for at that time?

A. Stores of different kinds.

Q. What stores were they?

A. Well, I can hardly name them all; there was—let me see——

Q. On which side of the street did the buildings that you have mentioned stand? How is that?

A. On the north side of Main street.

Q. My question was, what buildings were standing on the south side of the street in '64?

A. If I ain't mistaken I believe Brigg's building was up in '64. This was here, now we are in, and there was Molly's building and Fowley and Days and that meat market next, and I think McMann's building, and there was a kind of *and there was a kind of* old meat market or office. I believe Stuart had office, and afterwards it was made in a meat market for a little while; somewhere about where mine is now.

Q. Were any of those buildings that you have last named buildings of brick or stone; if so, what ones?

A. This here and McMann's was brick; that is all that were on this side of the street.

Q. What kind of building was then standing on this Market lot?

A. One-story frame.

Cross-examination:

Q. Where were you born?

A. I was born in England.

Q. How much property h-ve you ever bought or sold in Amboy?

A. I haven't sold much. I sold a house.

471 Q. How much have you bought?

A. I haven't bought any. I have built a couple.

Q. Never have been a dealer in real estate?

A. No, sir.

Q. You don't pretend to know anything special about the value of it from experience?

A. No; I don't know the value of every lot around here ever since I came here.

Q. Do you remember that property being sold in '64 on Main street?

A. Sold by the officer?

—. Sold any way, in '64.

A. No; I cannot say that I do.

Q. How do you know the value of property on Main street in '64?

A. Yes; I know on the other side of the street, on the north side, just about where that is located, that lot and the frame building that was on it at that time sold for $2,000.

Q. How big a lot?

A. I suppose fifty feet front. Now, I would not be positive about fifty feet front. The second might be seventy-five feet front.

Q. What kind of building was on it?

A. A little frame building; well, it was two-story.

Q. Was property here as high in '64 as it ever has been?
A. I suppose it was.
Q. Was not it a great deal higher then than it is now?
A. No; I rather think not. I think to-day that it was higher considerable than it would be in '64.
Q. Are you sure about that?
A. Yes; I am sure in my own mind.
Q. Do you know that was the end of the war and supplies were very high and everything was on a boom?
A. Didn't everybody want to buy real estate?
Q. Didn't they want to buy real estate at the end of the war?
A. No; I think that they were not very anxious.
Q. Was not Amboy on the boom, too?
A. It was on the boom. Now, I think that railroad bonds were issued. As far as building was concerned previous to that
472 time, I don't suppose it was what we would call brisk at that time.
Q. When was the railroad built and the bonds issued?
A. It was late, '68 or '9; somewhere about that year.
Q. Before that time Amboy was out of debt and prosperous, was it not?
A. Yes; I think it was.
Q. Since that time Amboy is taxed so high property is not worth what it was, is it?
A. No; I have been paying about the same tax on my property.
Q. You have not paid the railroad tax at all?
A. Yes; I paid it once, but got it back again.
Q. How much is the township of Amboy in debt, its railroad debt and all?
A. Well, I don't know really the amount the railroad debt is at present. I know what we have wanted to do. We was willing to pay $100,000 to clear the debt.
Q. Times are very dull in Amboy now?
A. I believe they are.
Q. The sale of real estate is not at all undertaken?
A. No; that is a fact.
Q. Why, in '64 times was good. Real estate must have been higher?
A. Well, I don't think there was much either buying or selling at that time.
Q. Why?
A. I don't know; it stood still quite awhile.
Q. Didn't the holders of it hold it quite high?
A. I know I sold a house about that time—well, a pretty fair house; a big lot. I sold it for $300.
Q. It was not anywhere near this building?
A. No; not the building we were talking about. No; it was three or four blocks away.
Q. When did you sell your house?
A. Well, I should say about '62 or '63.
Q. Times were good deal better in '64 than they were before that, were they not?

A. Well, for a year or two before that.
Q. Take '59.
A. Why, it is rather poor.
473 Q. But was not that lot in '64 worth as much as it ever has been?
A. I think it would sell for more money to-day than it would at that time.
Q. Much more?
A. I think a couple of hundred or three hundred more, I guess.
Q. Don't you know that lot with building on has been sold for $2,500?
A. I understand nothing. I understood that it was sold for $1,800.
Q. Lately?
A. Lately.
Q. Who by?
A. Thomas Cotton.
Q. Don't you know that Cotton two years ago paid $2,500 for it?
A. He sold it, if I am not mistaken.
Q. Didn't he buy it from Mr. McMann?
A. No; I would not be certain as to that.
Q. Didn't he buy it from Mr. McMann and paid $2,500?
A. Always had the impression that he sold that. He may have paid $2,500.
Q. As far as you know?
A. As far as I know; he must have lots of money if he did.
Q. Was not that a two-story building on that property in '64?
A. No, sir; one-story frame.
Q. Now, are you sure of that?
A. Yes, sir; positive.
Q. Don't you know that upon reflection that it was a two-story building, and when it was built that must cost $1,000 or $1,200; then two-story it must cost $1,000 more than that?
A. You see there is not much of a lot to it; it is flat roof; I think it runs back about twenty-five feet.
Q. Don't you know that lot sold before '64 for $1,800—that building on it?
A. No, sir; I don't think that.
Q. It may have done so for all you know, may it not?
A. It would be just the same as I said a bit ago—the man must have lots of money.
Q. You can't remember now about the real estate on that side of the street twenty-two years? Just what you think about it. Do you remember?
474 A. Yes.
Q. Didn't you look back now and give your judgment what it was worth?
A. It was not worth much for the last ten or twelve years.
Q. Why?
A. There was no building on it; few wanted it on this side.
Q. Why was not this side as good as the other side?

A. Why, because all the building was on this side.
Q. How far was it across the street?
A. As same as it is now.
Q. About how far is it?
A. I should say about eighty feet.
Q. The ground is just as good—the location is good?
A. It seems to me people didn't go on that side at all. There was several started buisness there and they could not do anything. It seems that they didn't go on this side of street at all.
Q. You are just guessing now, are you not, as to the value of the lot there?
A. No; I guess not.
Q. You don't pretend to know what anybody offered for it, then?
A. I don't know as anybody made an offer for it.
Q. You don't know what anybody sold it for in '64?
A. I didn't know that it had been sold in '64.
Q. You don't know what lots brought around it in '64, do you?
A. Not exactly.
Q. You don't pretend to know in a general way in '64?
A. I believe that Plein sold Davis lot for $400.
Q. You don't pretend to know how much the building on this lot was worth in '64?
A. This market, do you mean?
—. On this lot that we were talking about.
A. No; I don't know what it was sold for, if it was ever sold.
Q. What is the reason that you ain't guessing the value of the property in '64?
A. I had an idea that nobody wanted the property on this side of the street.
475 Q. Did you talk to Martin L. Arnold about the value of the property—of this lot?
A. No, sir.
Q. Did he tell you that he would like to prove that about $300 or $400 in '64?
A. No, sir.
Q. He didn't tell you that, you say?
A. No, sir.
Q. Did he tell anybody about what they wanted you to prove?
A. No; he said that there was some men coming up here; that he wanted to use me as some evidence in regard to his character.
Q. What do you mean by general character—reputation for truth and veracity?
A. A man that speaks the truth all the time, either in buisness or or out of buisness. I suppose that comes pretty near to it.
Q. Do you think you know his general reputation for truth and veracity in this neighborhood?
A. Yes, sir; I don't know as I ever caught him in any lie or anything of that kind. I don't know as anybody else.
Q. Do you understand that by general reputation for truth what people in the neighborhood say about it, or is it your own judgment about it?

A. Well, it is my own judgment. I have not heard neighbors complainaning about him in that respect.

Q. Do you ever hear anybody say that he was a truthful man?

A. No; I don't know as I did.

Q. How can you swear that you know his reputation for truth if you never heard anybody say anything about it?

A. I know him and we have had a good deal of conversation together. I haven't heard anything contrary but what he is a truthful man.

Q. That is what you base your judgment *on* of his general reputation upon, and not upon what you hear people say?

A. I never heard people say to the contrary.

Q. Have you lived here all the time for the last twelve years?

A. Yes; for the last twenty-four years.

Q. At home all the time?

476 A. Well, I have been to Chicago once or twice; probably I stopped a day or two.

Q. Did you ever hear anybody say that Martin L. Arnold's reputation was bad for the truth?

A. No, sir.

Q. Did you ever hear anybody say that he was untruthful; did you?

A. No, sir.

Q. Did you ever hear about his having lawsuits?

A. No, sir.

Q. Did you ever hear anybody say he was impeached in those lawsuits?

Objected to as based on unwarranted conclusion.

A. No, sir.

Q. Did you ever hear that in some of his suits witnesses were produced to swear that his reputation for truth was bad?

Objected to as incompetent.

Q. Neve- heard that talked about at all?

A. No, sir; to the best of my recollection.

Q. What did you hear that it was about? If it is not true, what is the reason you didn't hear it?

Objected to *in* asking explanation or assuming that the witness doesn't know to have existed.

A. Well, I don't feel interested in it.

Q. Don't you talk with your neighbors and know what they say about each other?

A. I do some, but I am no great neighbor at all.

Q. Do you generally hear what is said about one of your neighbors that is engaged in a lawsuit?

A. Sometimes I do and sometimes I don't.

Q. Do you remember the suit that Martin L. Arnold had with the Ill. Central Railroad Co.?

A. I have a slight remembrance, sir.

Q. Do you know in that case they produced witnesses to testify that his reputation for truth is bad, and that he afterwards
477 abandoned and settled the case?

Objected to as an unwarranted fact. (Question repeated.)

A. I don't know anything about it any further than he had a suit between himself and the railroad Co., and that is all I know about it; but whether he abandon- it and it was settled, that I don't know.

Q. Did you know that he was a witness or did you hear that he was a witness in the case of Edwin Clapp and Lot Chadwick?

A. No, sir.

Q. That witness- were produced from this town to testify that his reputation was bad and that they would not believe him under oath?

Objected to as unwarranted *and* fact to the case.

Q. And among these witnesses were John C. Jacobs, Josiah Little, Wm. B. Andrus, Chas. Bell, Henry Badger, Chester Badger, Henry Adams, and a number of other respectable citizens of Amboy?

A. I don't know.

Objected to as unwarranted in fact of the case.

A. I said no, sir.

Q. You never heard of it at all?

A. No.

Q. How does it happen that you never heard that it was so?

Objected to that he could not have heard, on the ground that it did not exist and therefore could not be explained. The defendants' counsel states that complainants' counsel either knows or ought to know that the statement made in the question is absolutely true.

Q. Did you hear of the suit he had with the heirs or the representatives of Allen E. Wilcox?

A. I heard a little about that, but I have paid no attention to it whatever.

Q. Did you hear in that case that he produced a receipt which the court found to be a forgery?

Objected to as unwarranted in fact.

The counsel for complainant made the same statement as
478 before as to these facts.

A. Well, I know that as far as I have heard that there was a receipt; that he had got a receipt which it was believed a forgery. I don't know how it came out.

Q. Didn't you hear that Arnold was defeated in that case?

A. No, sir.

Q. Didn't you know that in that case a dozen or twenty of the best citizens of Amboy were produced as witnesses and swore that Arnold's general reputation for truth was bad?

Objected to as untrue in fact, and if counsel for defense claims it is true he is asked to produce a record of the fact.

The counsel for the defense states that, according to his best rec-

ollection, *state that* the allusion in the question is true, and that no record of it exist-, because such evidence is taken in open court.

Counsel for complainant ask counsel for defense to put this question at rest by calling some person who heard such testimony, believing that it can't be done.

Counsel for defense says he will do so when the proper time comes.

A. No.

Q. Didn't you hear that was so?

A. No, sir.

Q. Do you remember his suit with Cephas Clapp?

A. I don't believe I did; I might have heard it.

Q. Didn't you hear in that case that Clapp's att'y produced a note against Arnold; that Arnold claims that it was paid; that Clapp produced no further testimony; that Arnold then claimed that he had paid it; that time Clapp produced fifteen or twenty respectable citizens of Amboy, a portion of whom I have named, who testified that his reputation for truth was bad, and that without further proof the jury found against Arnold?

A. No, sir; I have no recollection of that.

Q. It may be true so far as you know, may it not?

A. I suppose so.

479. Q. Do you know that in this very case a dozen of your best citizens have testified that Arnold's reputation for truth was bad?

Objected to as untrue in fact, as may be seen by referring to the record.

A. No.

Q. If you had known that such men as Josiah Little, John C. Jacobs, Henry Badger, and others had testified that his general reputation was bad would you have been able to have sworn now that you think that his reputation was good, and that people spoke well of his reputation for truth?

A. As far as I know anything about him. I have more or less to do with him ever since I came here. I can't say that he ever told me a lie, and I don't know as I have heard any one else say.

Q. If you had known that—if you had heard that these gentlemen have testified as I then say—could you then say that his general reputation for -ruth was good, aside from your own knowledge of character?

A. Of course, the more experience I had, the more dealings with him, probably would be on their side.

Q. You understand, don't you, that you are not allowed to state what you know of him yourself, but you are simply permitted to state what other people say about it? That is the question for you to answer.

A. Well, I don't know as any one has said anything, then, to me secret in that respect.

Q. No; the question is that, understand, if you had heard that

these men had said that the people generally in Amboy said that he was an untruthful man could you now say that you understood that the people generally said that he was a truthful man?

Objected to for the reason that none of the witnesses that have been referred to even made such a statement.

A. Well, I don't know as I ever heard anybody, I say, as I said before.

Q. Don't you know, sir, that a thousand people in the town of Amboy could be brought here to say that Arnold's reputation for truth was bad?

480 A. Well, I should say no.

Q. Don't you know that he has been scouring the town for days to get a single individual to come here to swear that his reputation for truth is good, and that he only succeeded in getting anybody to testify for him occasionally and that is somebody who don't pretend to know anything about what the people say of him?

(Question repeated.)

A. No.

AMBOY, ILLINOIS, *May Eighteenth, A. D.* 1886.

On the foregoing testimony being read over to the witness he testified as follows to the further interrogatories of A. C. BARDWELL, attorney for complainants:

Int. Was the Market lot referred to worth more or less, in your opinion, in 1860 than in 1864?

Ans. No; think not worth any more in 1860 than in 1864—$400 or $500.

Recross:

Int. Were there more buildings on the south side of Main street in 1856 than in 1860 or 1864?

Ans. That I could hardly remember now.

Int. Isn't it true that there were a great many more on the south side of Main street in 1860 and '64 than there was in 1856?

Ans. There was a few more, I guess.

Int. Doesn't the map of Amboy, made in 1858, now shown you, indicate that there were eleven business buildings on the south side of Main St., in block eleven, being the block wherein the building in question is situated?

(Objected to as secondary and incompetent.)

Ans. Well, I couldn't say how many there was. The map shows that there is eleven somethings.

481 Q. Don't the map show that there are eleven buildings there? Answer yes or no.

Same objections.

Ans. Well, it seems to me that there is eleven something there, but whether they are buildings or not I couldn't positively swear.

Q. Have you any doubt that those eleven spots marked on block eleven indicate buildings?

A. They may be, but I am not very much posted about looking over maps.

Defendants' counsel offers in evidence said map and asked to have it marked as an exhibit in the case.

(Objected to as incompetent, the proper foundation not having been laid.)

Redirect:

Int. Do you think there were eleven buisness buildings in block eleven in 1858?

(Objected to as not being proper redirect.)

Ans. No.

Int. Can you see anything on the map referred to explaining what might be houses or sheds or shanties?

Ans. I think Squire Stewart had an office somewhere about where Meyer's store now is.

Int. How high is that building?

Ans. One story, to the best of my knowledge now.

Int. Isn't it true that there was not at that time a single building in that block not more than a story or a story and a half high in 1858?

Ans. I wouldn't be positive whether McMahon's brick building was built at that time. It was a two-story building, and
482 Briggs' two-story building was there in 1858. No other as I am aware of.

THOS. HINES.

Subscribed and sworn to before me this eighteenth day of May, A. D. 1886.

JAMES F. SANDFORD,
Speciam Commissioner.

DENNIS POWELL, the witness produced on behalf of the complainant, being duly sworn, testified as follows:

Q. What is your nmae, age, occupation, and place of residence?

A. My occupation is that of boiler-maker in the Ill. Central shop; residence, Amboy; age, fifty-nine; name, Dennis Powell.

Q. How long have you resided in Amboy?

A. About twenty-nine years.

Q. What position, if any, do you occupy in the Ill. Central shop here in Amboy?

A. Well, I have charge of the boiler shop—foreman.

Q. Are you acquainted with Martin L. Arnold?

A. Yes, sir.

Q. How long have you known him?

A. Well, sir, I might say I have known him at least twenty-eight years; I might say more—that I have known him almost ever since I have been in the town.

Q. How near to him have you resided during those years?

A. Well, in '59 and '60 and part of '61 I resided in about, I might say, six hundred feet of him; I guess not much more than that; I can't tell exactly; less than a quarter of a mile.

483 Q. How near to him have you resided since '61?

A. Well, since 1873 have lived within less than one-fourth of a mile of his house, while he lived north of here. I don't know how long he has been away from there.

Q. How near to him do you reside now?

A. Now, I can't answer that question, for I don't know exactly where his house is. I know it is out south of here—I suppose less than a mile distance. I don't think it is a mile from my house to his. I am not positive — to that.

Q. Do you know his general reputation for truth and veracity in the community in which he lives?

A. Well, out there I don't know much about. I might in my own immediate neighborhood—my own personal knowledge——

—. Now, answer the question yes or no.

—. Where he lives I don't know anything about it.

Q. Do you know his general reputation for truth and veracity in the community in which you live?

(Question objected to.)

A. Well, I think I do. At least I have not conversed with many about it. I form my opinion from my own personal knowledge.

Answer objected to.

Q. What is that reputation—good or bad?

Question objected to.

A. Good, as far as I know.

Cross-examination:

Q. You don't know his general reputation for truth in the neighborhood where he lives? You said, No, sir; I don't know

484 anything about that. Do you know what people say about his truthfulness in the neighborhood in which you live?

A. I have heard it questioned.

Q. Where do you live?

A. A little northeast of here, going to the railroad. I live on Blackstone street.

Q. You never have heard anybody talk anything about it?

A. Well, I have never talked much about it.

Q. Do you know whether the people in that neighborhood know him or not?

A. Well, I judge they do, because most of them have lived there a number of years. I think they know him about as well as I do myself. I have never conversed with them on the subject. I don't know whether they know him or not.

Q. Do you know whether they know his reputation or not?

A. No; I have never heard about it.

Q. Do you understand what general reputation means?

A. Well, you talke about a man being a scoundrel or an honest man, another man talks about his character. I take that as a general reputation.

Q. Do you mean general reputation, then, what a majority of the people say about a man?

A. Well, I should take it not what you may say about it. Well, if I would hear one man speak disrespectfully of another I should not pay much attention to it; if I should hear half a dozen men speak of the character of another I should take some notice; I should say his reputation was bad.

485 Q. You are a boiler-maker in the Ill. Central shop?

A. Yes, sir.

Q. You have been there some time?

A. Yes, sir; I have been there over twenty-four years.

Q. You don't get away from your business much in the day-time?

A. No, sir.

Q. You are not down town much?

A. Round to the post office and the shop.

Q. I think that you are busy all the time. You are not around to hear what people say about their neighbors?

A. No, sir.

Q. You don't pretend to know what the people say or have been saying the last ten years about Martin L. Arnild?

A. No, sir.

Q. It may be that it is the common talk on this street or anywhere that Martin L. Arnold is the biggest liar in the town?

A. Only what comes under my common observation.

Q. Don't you think that if you were out on the street you would find that to be true?

Objected to as incompetent.

A. I don't know hardly how to answer that question. If I had heard I would understand it to be so. If I didn't hear I would not form an opinion at all.

Q. Did you ever hear about Martin L. Arnold having a great deal of litigation?

A. I have heard about him having some lawsuits.

Q. Did you hear about him having been impeached in five or six cases?

Objected to as untrue in fact.

A. No, sir.

Q. Did you ever hear of anybody swearing that his reputation was bad?

A. I don't think I did.

Q. You never heard that talked about at all? You don't know as you heard anybody say that they swore or ever heard anybody swear to that effect?

A. I don't think I did.

Q. Nor that they heard of anybody doing so?

A. No.

Q. Now, isn't it true that in the lawsuits that he has had
486 in the last ten years that the best men in your town have testified that his reputation is bad?

Objected to as untrue, and the counsel must know it, and unfair.

A. — answer to that question I should say that I am not around enough among those to hear their reason. If there is any truth in it I don't know it.

Q. Don't you think that is the reason that Arnold has brought you here, to testify to his reputation?

A. Don't know his object at all. He asked me to come down here to speak a word, good or bad; answer just as the question was put to me; answer them just as I see fit. I come down here on my own accord.

Q. Now, isn't it true in all the lawsuits he has had the last ten years that the neighbors know it?

A. I think they do.

Q. Don't you think that he gets you to come here to testify in his behalf; that he knows that you have been confined and don't know what is said about it?

Objected to as untrue and unfair.

A. I can't say. I don't know his object. I am testifying to what I know.

Q. If Mr. Jacobs, Mr. John C. Jacobs, Josiah Little, Henry Badger, Chester Badger, Charles Bell, Henry Adams, W. B. Andrus, and a number of other gentlemen of good standing in this community, who generally know what is going on, have testified in four or five cases that Arnold's reputation for truth is bad, and you know it, could you then say that you believe his reputation to be good in that particular?

A. If I heard men testifying in that particular I should say his reputation was bad. I would want to hear before I formed an opinion.

Q. Did you hear about his litigation with the Wilcox estate?

A. Well, sir, I have heard it talked about, but I never heard any particular*ly* about it.

Q. Did you hear that he was charged with forgery in that case?

A. I don't know. I have heard it talked about in the shop.
487 There was a lawsuit between Mr. Arnold and Wilcox, I won't say that it was Miss Wilcox or who, but about the Wilcox estate.

Q. Did you hear that he was charged with forgery?

A. No, sir; I won't say that I did.

Q. Did you hear that the court found against him on the question of forgery?

A. I won't say I did.

Q. If you had heard that, would you say his reputation was good for truth or honesty?

A. I would want to know that he had been impeached before the

court and then I would believe it, but I would not believe if I knew nothing about it.

Q. As a stranger you would not want to take my word on that?

A. I would take any man's word that I knew to be truthful.

Q. Or Mr. Bardwell's? Do you remember his suit with the Ill. Central Railroad Co.?

A. I don't remember anything particular. I don't know anything about it.

Q. Did you hear that they had a dozen or more of the best citizens of Amboy to swear that his reputation was bad?

Objected to as untrue and unfair.

A. No, sir; I know nothing of the kind.

Q. Have you had much business with Arnold?

A. No, sir; not a great deal; no more than a friendly chat when we met.

Q. Haven't done any business at all?

A. I have bought hay of him; paid him for it.

Q. He delivered it before you paid him?

A. Well, I won't say positive to that; I don't recollect. I have bought hay of him. I won't say whether I paid him before or afterwards.

Q. Was that all the business you had with him?

A. All that I can remember.

Q. There is nothing in that. When you paid you didn't
488 know whether he was truthful or honest?

A. No, sir.

Q. Then you haven't got much to base your statement?

A. Knowing only what I know, I have never heard anything to cause me to think that he was a liar or a thief or a bad man general-.

Q. You have never done any business with him?

A. No, sir.

Q. You have nothing to base your statement on, have you?

A. I don't know as I have, no more than any other man in the town I don't know any more about. I would answer just the same.

Q. Mr. Arnold has been down to the shop a good portion of the day to get men to come up here to testify?

A. That I can't testify to. Mr. Arnold was in my company five minutes, not to exceed five minutes, asking me that a man by the name of Fish, under me, asking me if I would let him off; if I would let him off about half an hour it would save him from going to Dixon; that is all the conversation I had with him.

Q. Don't you know that he spent a great deal of time in trying to get witnesses in the shop, and that the only one he succeeded in getting — Mr. Fish, except yourself?

A. I am busy & I have no time to look after men except what is under me.

Q. Do you know Fish?

A. Yes, sir.

Q. Do you know what his general reputation for truth is?

Objected to as incompetent.

A. Nothing, only what I have heard about.

DENNIS POWELL.

Subscribed and sworn to by Dennis Powell before me this eighteenth day of May, A. D. 1886.

JAMES F. SANDFORD,
Special Commissioner.

489 ANTHONY ESSFELD, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Q. What is your name, age, occupation, and place of residence?

A. My occupation is wagon-maker; reside in Amboy; age, fifty-one; name, Anthony Essfeld.

Q. How long have you resided in Amboy?

A. About twenty-nine years, I think, I have been here, I might say, regular. I have been away some part of the time.

Q. Are you acquainted with Martin L. Arnold?

A. Yes, sir.

Q. Have you been carrying on wagon-making and blacksmith business here in Amboy in your name?

A. Yes; I carried on the wagon buisness ever since I have been here, and the blacksmith.

Q. Are you the proprietor of the buisness you carry on?

A. I am of the wagon buisness, but not of the blacksmithing, not at present.

Q. How long have you known Martin L. Arnold?

A. I have known him ever since I have been here; I think, for twenty-eight years; somewhere along there.

Q. How near to him have you resided during those years?

A. Well, I live pretty near, about within two or three hundred feet, I should judge, probably as much as twenty-five years.

Q. How near to him do you now reside?

A. I should judge—I don't know really where he lives now—I don't know. I have been away from where I used to live almost five years, and I don't know where he resides since that time.

Q. Do you know the neighborhood in which he lives now?

A. Well, I don't know really; do — that either.

Q. Do you know his general reputation for truth and veracity in Amboy and vacinity?

490 A. As far as his reputation is —, I don't know anything about him. I have had dealings with him, and that was always right.

Objected to as not responsive.

Q. Have you ever heard anything said against his truthfulness?

Objected to as improper.

A. Why, I don't know as I could answer anything on that, really, anything more than what I did in that respect, the buisness which

we had, and that was always straight. Further I have never heard anything outside, particular-.

Answer objected to.

Q. Have you ever heard his truthfulness questioned or talked about in Amboy or vacinity?

Objected to; the same objection.

A. Why, yes; I don't know but what I have heard talking about him, or such as that.

Q. Did you ever hear any one say that he was an untruthful man?

A. I don't know as I ever did.

Cross-examination:

Q. You say you don't know his general reputation for truth?

A. I don't, I am sure.

Q. You have had some little dealings with him and you have had no trouble with him. Did he pay you everything he owed you?

A. Yes, sir.

Q. Does he owe you anything?

A. No, sir.

Q. Do you owe him anything?

A. No, sir.

Q. Are you under any obligation to him?

A. No, sir.

Q. Did he offer to do anything for you if you would come up here?

A. No, sir; he asked me to come up and I told him I would.

Q. You say you have heard people talk against him, or so on. Didn't you ever hear people talk about him and say he was
491 not a reliable man—wasn't a very good man?

Objected to as incompetent.

A. I don't know as I did, any more than I know what business I had with him. It was always square, and that is about all I can say.

Q. Did you ever hear about him having a lawsuit?

A. It seems to me I did. I heard about a lawsuit; that is all I do know.

Q. Did you ever hear in those lawsuits witnesses here in Amboy swore tha- his reputation was bad?

A. I don't know anything about it, I am sure.

Q. Can you remember anything that you ever heard anybody say about him, about his truth or reliability?

A. I can't, I am sure.

ANTHONY ESSFELD.

Subscribed and sworn to by Anthony Essfeld this eighteenth day of May, A. D. 1886.

JAMES F. SANDFORD,
Special Commissioner.

492 WILLIAM ARMOUR, witness produced on behalf of the complainant, being duly sworn, testified as follows:

Q. What is your name, age, occupation, and place of residence?
A. Occupation, a locomotive engineer; age, forty-two; place of residence, Amboy; name, William Armour.
Q. How long have you resided in Amboy?
A. About twenty-seven years.
Q. In what business during those years?
A. Railroading.
Q. In what capacity?
A. Engineer twenty years of my time.
Q. On what road?
A. Ill. Central.
Q. Are you acquainted with Martin L. Arnold?
A. Yes, sir.
Q. How long have you known him?
A. About twenty-five years.
Q. How near to him have you resided during those twenty-five years?
A. I have lived in the house with him for a year or a little over a year, and the rest of the time lived pretty close—a block or two from him seven or eight years.
Q. How near to him do you reside now?
A. Well, I don't know exactly; pretty close.
—. Are you living on the farm?
—. Mr. Arnold?
—. (Yes.)
A. Well, then, we are about a mile and a half apart.
Q. Do you know Mr. Arnold's general reputation for truth and veracity in the community in which he lives?

Objected to.

A. Yes, sir.
Q. What is that reputation—good or bad?
A. It is good.

Cross-examination:

Q. You say you know his general reputation?
A. Yes, sir.
Q. What do you mean by general reputation for truth?
493 A. Well, I mean that he is a good citizen—tells the truth.
Q. You don't mean, then, what people say about him?
A. No, sir.
Q. You, sir, give your own judgment about it. Is that it?
A. Yes.
Q. You run the engine on the Central road, are not around town much, and you generally attend to your own business?
A. Part of the time; about one-half of the time, probably.
Q. Do you know what the people say about him in this town?
A. No; I don't know as I do.

Q. You don't pretend to know that, do you?
A. I have always heard him spoken well of.
Q. What buisness have you ever done with him?
A. Well, I rented a house of him.
Q. What else?
A. Had a little buisness with him.
Q. What kind of buisness?
A. I bought a good deal of stuff of him.
Q. Was there anything in your buisness so that you could tell whether he was truthful or no?
A. Yes, sir; he has always been truthful with me.
Q. Did he have any cause to be otherwise?
A. No; I don't know as he did.
Q. Did you ever know about his having lawsuits in this Co.?
A. Yes, sir.
Q. Did you hear about him having lawsuits?
A. I have heard that he had some.
Q. Did you ever hear that he was impeached in those lawsuits?
A. No, sir.

Objected to.

A. No, sir.
Q. Did you ever hear that a dozen witnesses in at least five or six cases testified that his reputation was bad?

Objected to as untrue and unfair.

Q. If you had known that that was true, could you say that his reputation was good from what people say about him?
A. Yes, sir; as long as a man deals fair with me, why, till I see something myself, I think it is good.
494 Q. Now, haven't you heard a great many people say that Martin was not a reliable man, and that he was not truthful?
A. No, sir.
Q. Do you know Charley Bell?
A. Yes, sir.
Q. Did you ever hear him say so?
A. No, sir.
Q. Do you know Henry Adams?
A. Yes, sir.
Q. Did you ever hear him say so?
A. No, sir.
Q. Do you know Josiah Little?
A. Yes, sir.
Q. Did you ever hear him say so?
A. No, sir; I didn't hear him say anything about it; never heard him mention his name.
Q. You never heard anybody speak about it?
A. No, sir.
Q. Did you hear his having a lawsuit about the estate of Allen E. Wilcox?
A. Yes, sir; I heard that he had a case.

Q. Did you know he was charged with forgery in that case?
A. No, sir.
Q. Did you know that the court found him guilty of forgery?
A. No, sir.
Q. Would that change your opinion?
A. I don't know as it would.
Q. You think just as much of a man that committed forgery as a man that would not?
A. No, sir.
Q. Why wouldn't you change your opinion?
A. As long as a man treats me right and deals fair with me—if I knew it to be so it might change my opinion.
Q. Would you have any respect for the opinion of John C. Jacobs, Mr. Richards, Josiah Little, W. B. Andrus, Henry Badger, Chester Badger, Chas. Bell, Henry Adams that Arnold's reputation for truth was bad?
A. Yes, sir.
Q. If they should testify that his reputation for truth was bad would that change your mind upon the question as to whether it was bad or not?
A. Well, I couldn't say.
Q. You believe that they were honest in what they said, wouldn't you?
A. Yes, sir.
Q. Well, then, if you believed they were honest and they
495 said it was bad wouldn't that effect your opinion at all?
A. I couldn't say whether it would or not.
Q. Now, don't you know that it would, Mr. ——?
A. No, sir; I can't say whether it would or not.
Q. If it is true that these men have testified as I suggested, how can you explain the fact that you have not heard it—why you have not heard that they have so testified?
A. As I have stated, I could not hear anything about it.
Q. Why couldn't you, if it is so?
A. I don't know.

Redirect examination:

Q. As I understand, you have not heard Mr. Arnold's character for truthfulness talked about or discussed by anybody?
A. No, sir.

Recross-examination:

Q. You base your opinion on his reputation for truth upon what you know about him yourself?
A. Good deal of what other people may know about him or say about him. I haven't heard anything about the man.
Q. Didn't you say that you based your opinion upon what you knew of him yourself?
A. Well, I said that the man had always dealt fair and square and honest with me.

Q. Didn't you say that you based your opinion upon that?
A. I don't know as I did.
Q. Well, isn't it true that you have and did base your opinion upon that?
A. Well, I have not heard anything else.
Q. You have never heard it talked about at all, you say?
A. No, sir.
Q. You have been in this town the last fifteen years continually?
A. Yes, sir; running in and out for the last twenty-five years or twenty-six years.
Q. What is your route?
A. From here to Dubuque.
Q. How long are you gone?
A. Sometimes a day and sometimes two.

496 Q. Your business is on the road, not around town?
A. Yes, sir.
Q. Does Arnold owe you anything?
A. No, sir.
Q. Do you owe him anything?
A. No, sir; I never owed him a nickle.
Q. How did he happen to get you to come here to testify?
A. I am a friend of his and I am a friend of his. He had not seen me for a long time. He met me down-town.
Q. Is there any particular reason for your being a friend of his?
A. No, sir.
Q. Has he a great many of friends around here?
A. Yes, sir; I presume he has. He is an old citi-en, and had aught to have a great many friends.
Q. That is how he has conducted himself.

W. ARMOR.

Subscribed and sworn to before me this twenty-third day of June, A. D. 1886.

JAMES F. SANDFORD,
Special Commissioner.

497 WILLIAM E. SKINNER, a witness produced on behalf of complainant, being duly sworn, testified as follows:

—. What is your name, age, occupation, and place of residence?
A. Name, William E. Skinner; age, I am 71 years old; occupation, I am a painter; place of residence, at Amboy.
Q. How long have you lived in Amboy?
A. Nearly 30 years.
Q. Were you acquainted with property in the city of Amboy, in part of lot 5, block (11) eleven, on the south side of Main street, and known as the Market lot?
A. I am acquainted with the property you have been speaking of, but don't know as I know the number of the lot?
Q. Was it ever occupied by Keefer and Livey as a meat market?
A. It was.
Q. Did you ever occupy any part of the building?

A. I did. I occupied the upstairs.
Q. During what years did you occupy the upstairs?
A. I couldn't tell you what years.
Q. For about how many years did you occupy it?
A. I do not remember.
Q. Were you there and did you occupy the chamber portion in 1860?

Objected to as leading by Mr. Dixon.

A. Well, I wouldn't say certain, but I should think that I was.
Q. Who, if you know, occupied the chambers of the building when it was burned down?
A. I don't know who did at that time.
Q. Did you occupy the chambers more than one year?
A. I should think that I did.
Q. For what purpose did you use it?
A. For a paint shop—that is, carriage painting.
Q. What was the character and condition of the building when you thus occupied it?
A. Well, the condition of the building was rather bad.
498 Q. What kind of a building was it?
A. It was built like a common frame house.
Q. Who occupied the lower portion when you occupied the chambers.
A. Well, I couldn't say certain; it's been so long ago.
Q. For what different uses was the lower part of the building occupied?
A. I don't recollect any business done there, only the meat market. That's all I recollect.
Q. Do you know how long the building was used as a meat market?
A. No, sir; I do not.

Cross-examined.

WILLIAM E. SKINNER.

Subscribed and sworn to b-fore me this eighteenth day of May, A. D. 1886.

JAMES F. SANDFO-D,
Special Commissioner.

499 JOHN GUNNING, a witness produced on behalf of complainant, being duly sworn, testifies as follows:

—. State your name, age, occupation, and place of residence.
—. Name, John Gunning; age, 52 years old; occupation, painter; place of residence, live in Amboy.
Q. How long have you resided in Amboy?
A. About 30 years.
Q. When did you come to Amboy—what year?
A. 1855, I think it was, or the spring of 1856.
Q. Are you acquainted with property in the city of Amboy?

A. Yes, sir; I am some.

Q. Were you acquainted with the market value of property there from 1860 to 1864?

A. Well, I can't say I could exactly give a descri-tion.

Q. Did you buy or sell any property in Amboy during those years?

A. Well, I bought a place about that time or close to it—within a year of that time.

Q. Do you own property in Amboy now?

A. Yes, sir; I do.

Q. When did you purchase it?

A. About four or five years ago this coming summer.

Q. Did you know of the purchase and sale of property in Amboy in 1860, and from that time to 1864?

A. Well, I have got kind of an idea what it was running for at that time.

Q. From what do you get that idea?

A. I am generally looking at such things, one way or another.

Q. Are you acquainted with a piece of property on Main street, in the west, part of lot (5), block (11), and known as the Market lot?

A. Well, I don't know just exactly what you mean by the Market lot. There was a market on Main street—on the south side of Main street—about that time.

Q. By whom was this market kept?

A. I think it was kept by a man by the name of Allcox.

500 Q. Do you remember of its ever being occupied by Keefer and Livey?

A. Yes, sir; I do.

Q. Is there a street or alley west of the property you refer to?

A. Yes, sir; there is an alley running from our buisness buildings.

Q. About how far was the building you have referred to from this alley?

A. I think one corner of the building to-ched the alley.

Q. On which side of the alley?

A. The north or east side.

Q. About how far and in what direction from the railroad?

A. About 300 feet east of the railroad.

Q. Then the alley is about 300 feet east of the railroad. What, in your opinion, was the market value in 1860 of the building you have referred to and the ground on which it was situated?

A. The building and the ground, I should think, would be worth four or five hundred dollars. The building was badly used up.

Q. In 1860 were there any other buildings east of the building you refer to?

A. I think there was.

Q. By whom was the building east of the one referred to occupied *by* in 1860?

A. Well, it was a small building by the corner. I think it was occupied by Mr. Skinner then.

Q. Were there any buildings west of the market building referred to?

A. Nothing but a little building between that and the alley.

Q. Were there at that time any buildings between the alley and the railroad?

A. Yes, sir; there was.

Q. What kind of buildings and for what occupied?

A. There was a building occupied by Cushing and Briggs, I think.

Q. In what buisness?

A. Grocery and apothecary buisness.

Q. Of what were these buildings on the south side of the street in 1860 constructed?

A. They were just lightly built frame buildings.

Q. Describe as well as you can the market building you
501 have spoken of and its condition in 1860.

A. Well, I think there was a front room and a back room and an upstairs; the steps leading to the upstairs were on the outside and very poorly built; of course it was, like all other buildings, put up temporarily and very cheap.

Q. What was the condition of the building at that time?

A. It was in a very poor condition. How I know: Mr. Skinner had a paint shop upstairs in the building and I was up in his shop.

Cross-examined:

Q. What was your occupation then?

A. At that time I think I was in the Orient House.

Q. Keeping hotel?

A. Well, I was in the hotel; I wasn't keeping it myself.

Q. Employed?

A. My father-in-law was keeping the hotel.

Q. What was your occupation from 1860 to 1864?

A. Painter.

Q. Up to that time, '64, had you owned any real estate in Amboy?

A. Yes; I think I did own one place.

Q. Where was it situated?

A. On Mason street.

Q. Was it buisness property or residence?

A. Residence.

Q. Do you own any buisness property in Amboy now?

A. Yes, sir; I do.

Q. When did you purchase it?

A. Five years this summer.

Q. What was the size of the lot you have spoken of as the Market lot?

A. I think it was, to my recollection, about 16 to 18 feet; I can't tell exactly.

Q. That was its frontage?

A. Yes, sir.

Q. What was its depth?

A. Maybe 20 feet, and might run to 25 feet; kind of a cut-off on the tail end.

Q. Do you recall any sales of buisness property in Amboy made in 1860 of which you know the prices paid?

502 A. Well, I can't recall only one. At about that time I bought one myself.

Q. You bought buisness lot yourself?

A. No, sir.

Q. Do you know what buisness property sold for in 1860 in the vicinity of this building?

A. Well, I can't say I do, exactly; yet I have got kind of an idea what property was selling for then on that side of the street.

Q. Isn't it a good deal of guess-work to look back 25 years and try to remember?

A. Well, I should think it was; yet I can recall two instances where I know about the prices paid.

Q. One of those was the piece you bought yourself, do you mean?

A. Yes, sir.

Q. That was not buisness property, I understood?

A. No, sir.

Q. Whom were the parties to the other sale you spoke of?

A. Well, I think it was one Mr. Crombey. He sold a little place right east of this in the same block where Joe Graves' building now stands, I should say.

Q. Do you know the dimensions of that lot which Mr. Crombey sold?

A. It is on Main street, 18 feet front and runs back about 100 feet.

Q. Was there any building on it at that time?

A. There was a very small one.

Q. Do you know the price it brought?

A. He offered the whole thing to me for $150.

Q. Do you know what the building on the Market lot rented for in 1860?

A. I do not know exactly..

Q. Nor either of these years to 1864?

A. No; I can't say what they did rent for.

Q. Was property more valuable in Amboy in '64 than it was in '60, or less?

A. Well, I should say at 1860 it was quite low, and a few years after it was a little higher, to my judgment.

Q. It was advancing from 1860 to 1864?

A. I think it was a little.

503 Redirect:

Q. How far was the residence property you bought from Main street?

A. Well, sir; think it was about 150 feet.

Q. Was it then or had it been occupied for buisness purposes?

A. My recollections are it was kept as a kind of a furniture shop before being used as a residence.

Q. Where did you say that the other property that you have mentioned as having been offered to you for $150 in Amboy was situated?

A. On the east end of the block.

Q. In the same block where the Market lot is situated?

A. Yes, sir.

Q. What was the frontage?

A. About 18 feet.

Q. And what was its depth?

A. Well, I should say it was 100 feet.

Q. About what was the size and character of the building situated on it?

A. It was a little building with about one room in it, I think.

Q. Was it a better or poorer bu-lding than the market building?

A. A poorer building.

Q. In what respect poorer?

A. Well, it was a small concern, not as large as the building on the Market lot.

JOHN GUNNING.

Subscribed and sworn to before me this eighteenth day of May, A. D. 1886.

JAMES F. SANDFORD,
Special Commissioner.

504 ALBERT Z. BODINE, a witness produced on behalf of complainant, being duly sworn, testified as follows:

—. State your name, age, occupation, and place of residence.

—. Name, Albert C. Bodine; age, 56 years old; occupation, justice of the peace; place of residence, Lee Center, Lee county, Illinois.

Q. You have once testified as a witness in this case?

A. I think I did, sir, a number of years ago.

Q. You were at that time asked to testify in reference to a deed from Henry Clapp to Lot Chadwick, included in this suit, and reference was made in your testimony to such deed. Do you now remember the fact of drawing said instrument?

A. I do.

Q. Do you remember the date of said instrument referred to?

A. The first day of March, 1869.

Q. How long before the execution of the deed referred to was it that Mr. Chadwick spoke to you in reference to drawing the deed?

A. The day previous is my recollection.

Q. Did Henry Clapp speak to you on the subject of drawing the deed?

A. My impression is he did not speak of it.

Q. What did Mr. Chadwick say—anything in reference to this transaction with Henry Clapp the day before the deed was executed?

Objected to as not competent.

A. He said he had purchased the land of Henry Clapp and he wished me to make a deed of it.

Q. Did he say anything further on the subject at that time?

A. Nothing that I recollect.

Q. Did he tell you then what the considerations were?

A. Yes, sir.

Q. Do you recollect what sum he named?

A. $10,000.

Q. Did he say anything in reference to you keeping it secret?

Same objection as before.

A. I don't recollect that he did.

505 Q. Was any one else present when he spoke to you about drawing the deed?

A. There was not.

Q. Did you have any conversation with him after the deed was executed?

Same objection.

A. I did not—that is, I mean not immediatel- after.

Q. Did you have any conversation with Mr. Chadwick in reference to the deed at any time after the deed was executed?

A. I think I did, on the steps leading to the post office, which he kept at that time.

Q. How soon after the execution of this deed did you have the conversation last referred to?

A. I could not say.

Q. What was said in that conversation?

Same objection.

A. I don't recollect just what was said, but the purport was this, that he did not intend to purchase the estate of Henry to wrong the children.

Q. Did he mention for what purpose he bought the land or took a deed of it?

Same objection.

A. Well, I couldn't say now just what he said in reference to that.

Q. Did he say anything as to the purchase for which he took a deed to the land?

Same objection.

A. I think one thing was he was afraid Henry would squander it. I think that was one of his reasons he gave at the time.

Q. How did you happen to get into conversation with him on the subject?

A. We were standing on the steps talking and he brought the matter up himself. He wished to set himself right to keeping up all appearances in reference to his buying the land.

Q. From what you said and heard before and after the execution

of the deed did you form any opinion as to the good faith as to this transaction between Henry Clapp and Mr. Chadwick; and, if so, what was that opinion?

506 Objected to as incompetent.

A. Well, my private opinion is I thought at the time certainly they were trying to beat some claims on the place.

Q. Did Mr. Chadwick at any time request you not to say anything to any one about the transaction or what had happened in relation to it?

A. I don't think he did.

Q. At the time the deed was executed did you see any notes passed from Mr. Chadwick to Henry Clapp?

A. I saw one or more notes, parti-ularly one one-thousand-dollar note, on interest.

Q. You refer, I suppose, to the Shaw note?

A. Yes, sir; I do.

Q. Do you remember seeing any other notes passed at that time?

A. I think there was other notes of smaller denominations of whose Henry had given to other parties.

Q. Have you any means of telling to whom any of the other notes were payable and their amounts?

A. My impression is there was notes given to parties living in Franklin Grove for farm machinery.

Q. Did you figure up the amount of any of these notes?

A. I did not.

Q. Are you sure that at the time of the conversation which you referred to on the steps of the post office—was the office still in the building occupied by Mr. Chadwick as a residence?

A. My impression is that it was, but still I may be mistaken; if it had been removed it had been very recently.

Cross-examined by Mr. DIXON:

Q. How many times have you been examined as a witness concerning the matters arising out of the transactions of the first of March, 1869?

A. Since 1869 I have spent some 26 or 27 days in the matters pertaining to that; I have been present quite a number of days giving in testimony; I couldn't tell very certain how many times I have be- examined in each particular case.

507 Q. How many times have you been called a- a witness and testified about that transaction?

A. I should judge about ten different times.

Q. Do you remember which suit it was in which you first gave testimony concerning that transaction?

A. It was Lot Chadwick *versus* Edwin Clapp.

Q. Is your recollection of what transpired when that deed was made as perfect now as it was when you gave your testimony in that case?

A. Yes, sir; so far as the main facts are concerned.

Q. You were then called as a witness for Lot Chadwick, were you not?

A. Yes, sir; I think I was.

Q. Did you not then testify that when this deed was made bonds, notes, and securities aggregating $10,000 were turned over by Lot Chadwick to Henry Clapp?

A. No, sir; I do not recollect testifying to that.

Q. Did you not in substance?

A. I did not testify in that manner.

Q. When did you first express the opinion you have testified to as to the good faith as to that transaction?

A. I think it was last fall, in October, my impression is, the first time the question was asked me.

Q. Who did you tell it to then?

A. I think Mr. Truesdell asked that question here in Dixon, at Mr. Sandford's office.

Q. Hadn't you told some one else that was your opinion before that?

A. I had all along before the transaction expressed some doubts towards the *bonafideness* in reference to the matter, yet I know nothing.

Q. And you don't now, do you?

A. No, sir; not a thing.

Q. What was it Lot Chadwick said to you at the post-office steps?

A. He said he did not intend to wrong Henry's children by purchasing the land.

Q. Was that all he said?

A. That was about all of any consequence.

508 Q. Had you told him any one said he intended to wrong Henry's children?

A. No, sir.

Q. Had you heard that any one claimed he intended to wrong Henry's children?

A. I had heard a great deal of talk about it.

Q. There had been such talk in the neighborhood, had there?

—. Yes, sir.

Q. And he said it wasn't true, did he?

A. Yes, sir; he did.

AMBOY, ILLINOIS, *May* 18, 1886.

On the foregoing being read over to the witness he testified as follows in answer to the further interrogatories of A. D. Bardwell, Esq., complainant's attorney:

Int. Did Mr. Chadwick at any time give any reason for making the consideration of the deed from Henry Clapp to him so small?

Ans. Well, the reason that he assigned — he might have to litigate the matter to get clear title.

Int. Did he state or give you to understand what matters he might have to litigate?

(Objected to by defendants' counsel as leading.)

Ans. I don't think he did definitely, but I think he had reference to this Edwin Clapp matter, and also this McLean matter.

(Last clause of answer objected to as not responsive.)

Int. When and w-ere did the conversation with Mr. Chadwick take place to which you have just referred?

Ans. My impression is it was in my office, previous to the decision of the supreme court in reference to the said suit between Edwin Clapp and Lot Chadwick.

Recross-examination:

Int. As I understand you, this conversation did not take place until after both of these cases had begun and the Edwin
509 Clapp case was in the supreme court?

Ans. That is the way I understand it; yes, sir.

Int. Did he not at that time say that on account of these suits he had paid a good price for the place, and that time had shown that the consideration was not small, or something to that effect?

Ans. That was the porport of his conversation.

Int. Didn't Chadwick always claim and testify at least twice that when he bought the farm he knew nothing about the Edwin Clapp claim and nothing about the McLean claim, except that Arnold insisted that the McLean mortgage was not released, although the notes had been paid and surrendered?

(Objected to by complainant's counsel in so far as it refers to the testimony of Mr. Chadwick.)

Ans. I couldn't positively state as to how he testified, but he claimed such to be the case in conversation with me, according to my recollection.

Redirect:

Int. As I understand you, notwithstanding Mr. Chadwick some time claiming that he knew nothing of the McLean mortgage when he took the deed from Henry, still you understood from him that he took the McLean mortgage into account in fixing the consideration of the deed from Henry to him.

(Objected to as not proper redirect and because it appear- from the witness' testimony that he did not so understand Chadwick, but, on the contrary, always understood — to claim that he did not take either the Edwin Clapp or McLean claim into consideration, and to claim that he had paid a fair consideration for the place, and the subsequent litigation had shown simply that he had paid a good price therefor.)

510 Ans. My impression is that he had reference to these matters. That was my impression at the time.

Recross:

Int. You mean at the time of the conversation you have testified to, do you?

Ans. Yes, sir.

Int. That is, he did not so tell you, but from what was said, as stated by you in answer to my cross-interrogatory number —, you think he then referred to the McLean mortgage?

Ans. Yes, sir; with the other matter, I thought so.

Re-redirect:

Int. State now what he said at that time in reference to the McLean mortgage.

(Objected to as leading, having been gone into, and as not being proper redirect.)

Ans. I don't recollect that he stated anything in reference to it; not to particularize.

Int. What reason had you to think that he alluded to it?

Same objection.

Ans. Well, there was those two matters—the Edwin Clapp matter and the McLean matter—and they were the only two matters that involved that land that I knew anything about.

Int. And you understood him as to referring to them in fixing the consideration?

Same objection.

Ans. I did.

Third recross:

Int. I still understood that you have given the substance of his conversation with you in your answer to my — cross-interrogatory.

511 Ans. Yes, sir.

Redirect:

Int. Please relate in your own way the conversation referred to, as near as you remember it.

(Objected to as having been gone into and as not proper redirect.)

Ans. He was speaking of the defense in the Edwin Clapp case, trying to show that the consideration in the deed was inadequate; therefore he spoke of the matter as he did on that occasion, as testified to.

Int. Now, please go on and repeat what he said.

(Same objection.)

Ans. The sum and substance of the conversation was, in view of the fact of his having to probably *to* litigate those matters, he had given all he could afford to for the land.

Recross:

Int. That is, at the time of the conversation, after the suits were begun, in consideration of the fact that it then appeared that he

would have to litigate those suits, it was clear that he had paid all he could afford to?

Ans. It probably seemed to him at that time; yes, sir.

ALBERT Z. BODINE.

Subscribed and sworn to before me this eighteenth day of May, A. D. 1886.

JAMES F. SANDFORD,
Special Commissioner.

512 JOHN SMITH, a witness produced on behalf of complainant, being duly sworn, testifies as follows:

—. What's your name, age, occupation, and place of residence?

—. Name, John Smith; age, I am 53 years old; occupation, I am a carpenter; place of residence, live in Amboy.

Q. How long have you resided in Amboy?

A. About 15 years. Since the fall of 1861.

Q. Are you acquainted with Martin L. Arnold?

A. Yes, sir.

Q. How long have you known him?

A. I have known him for the last 12 years.

Q. How near to him have you resided during those years?

A. Well, about three-quarters of a mile. I don't think it's over that.

Q. Do you know his general reputation for truth and veracity in the vicinity in which he lives?

A. I think it's good, as far as I know.

Q. You are first to answer whether or not you know his general reputation for truth and veracity in the vacinity in which he lives, and this you are to answer, yes or no.

A. Yes.

Q. What's that reputation, good or bad?

A. Good.

Cross-examined:

Q. Did you ever hear him talked about?

A. Sir?

Q. Don't you understand my question? Did you ever hear people say he wouldn't tell the truth?

A. No, sir; not to my knowledge.

Q. Did you ever hear anybody say he lied?

A. No, sir.

Q. Who did you ever hear say he would tell the truth?

A. Lots of folks.

Q. What do you understand by reputation?

A. A man who pays his debts.

Q. If people say he lied and that he committed forgery
513 would you still conclude, notwithstanding such transactions, that his reputation for truthfulness was good?

Ans. I don't understand, Mr. Bardwell.

Q. When you say that you base a man's reputation on the facts as to whether he pays his honest debts or not.
A. Yes, sir.
Q. Do you mean that you judge a man's truthfulness whether he pays his debts or not?
A. Yes, sir.

JOHN SMITH.

Subscribed and sworn to before me this eighteenth day of May, A. D. 1886.

JAMES F. SANDFORD,
Special Commissioner.

514 ERASTUS NEWMAN, a witness produced on behalf of complainant, being duly sworn, testifies as follows:

—. What's your name, age, occupation, and place of residence?
—. Name, Erastus Newman; age, I am 43 years old; occupation, farmer; place of residence, Lee Center, Lee Co., Illinois.
Q. How long have you lived in that town?
A. About 30 years.
Q. Are you acquainted with Martin L. Arnold?
A. Yes, sir.
Q. How long have you known him?
A. About 16 years, I guess.
Q. How near to him have you resided during those years?
A. Within two miles.
Q. Are you acquainted with his general reputation for truth and veracity in the vacinity in which he lives?
A. Yes, sir.
Q. What is that reputation, good or bad?
A. Good.

Cross-examination by Mr. DIXON:

Q. What do you understand by reputation?
A. I do not hear anything bad about him. A fellow I think his reputation is good.
Q. Did you never hear anything said against Arnold?
A. No, sir.
Q. You have known him 16 years and never heard he was indicted in this county; never knew he was accused of forgery? Was you ever in court?
A. Yes, sir.
Q. Did you know Cephas Clapp?
A. Yes, sir.
Q. Did you know Arnold had a lawsuit with him?
A. I did not.
Q. Did you never hear of Arnold having a lawsuit with Charley Bell? Did you never hear that Arnold was impeached in both of those suits?
A. I did not.

Q. When did you live near him?
A. Now.
Q. How near to him?
A. Within two miles of him.
Q. How long have you lived that close?
A. I think I have lived there 10 years.

515 Q. Did you ever hear of his forging a lease against the estate of Allen E. Wilcox?
A. No, sir; nor no other estate.
Q. Didn't you ever hear of that lawsuit?
A. No, sir.
Q. Whom did you ever hear say anything good about him?
A. I have heard lots of them—Treadwell, Dresser, and lots of others. I could name a thousand.
Q. Who did you ever hear say he would not lie?
A. I never heard any one say he would or he wouldn't.
Q. Then you never heard any one say he was truthful or not?
A. No, sir.

ERASTUS NEWMAN.

Subscribed and sworn to before me this twenty-fifth day of May, A. D. 1886.

JAMES F. SANDFORD,
Special Commissioner.

516 ISAAC EDWARDS, a witness produced on behalf of complainant, being duly sworn, testifies as follows:

—. What's your name, age, occupation, and place of residence?
—. Name, Isaac Edwards; age, am 57 years old; occupation, sheriff of Lee county; place of residence, Dixon, Ill.
Q. Did you ever reside in Amboy, Lee Co.; and, if so, what lenght of time and to what time?
A. I went there in 1853 and left there in '82.
Q. Do you own any real estate in Amboy?
A. Yes, sir.
Q. Did you own any real estate in Amboy in 1860?
A. Yes, sir.
Q. Were you acquainted with the market value of real estate in Amboy from 1860 to 1864?
A. Yes, sir; I was some acquainted with it.
Q. Did you know a piece of property on lot 5, block 11, on the south side of Main street and known as the Market lot?
A. I couldn't say the number of the lot known as the Market lot. I knew it as a meat market.
Q. By whom was the building you refer to occupied as a meat market?
A. I don't believe I could be positive who occupied it.
Q. Is there a street or alley west of the property you refer to?
A. Yes, sir.
Q. About how far west of it?
A. About 15 or 20 feet in front.

Q. How does this alley run in reference to Main street?

A. It runs southeast from Main street. Those blocks are not square. That alley must run south of Main street and not quite from Main street. None of the streets are square there.

Q. About how far is it from the west line of the lot you
517 refer to to the railroad?

A. Well, if I was to testify, and no other way to do it, I should say about 250 feet; it might run 300, but I think it all of 250.

Q. About what, in your judgment, was the market value in 1860 of the lot you refer to?

A. The lot itself?

Q. The lot itself.

A. Well, I believe the lot itself, at that time, was worth about $150.

Q. What would the building on it at that time add to its value?

A. Well, I am not so positive about that building. I can't fix it in my mind very strong; it was kind of a cheap building; but then all the buildings along there at that time were cheap buildings.

Q. Well, tell us, as near as you can, what the building added to the market value of the lot in 1860.

Objected to.

A. Well, as near as I could guess, it was worth about as much as the lot itself. I don't want it understood I am very positive about the value of the building.

Q. Was there any building on the south side of Main street at that time that was a worth more than $150?

A. That I couldn't answer.

Q. Do you remember a piece of property on the south side of Main street that was occupied or owned about that time by Mr. Crombey?

A. I don't think I do; it couldn't have been that late in the day.

Q. Do you know a piece of property on the south side of Main street now occupied by Joseph Graves?

A. Yes, sir.

Q. Where was the property you have been speaking of and giving the value of in reference to the property now occupied by Mr. Graves?

518 A. It is about half way between Graves' and the railroad. It may be a little nearer than the railroad.

Q. Is it or not in the same block?

A. Yes, sir.

Cross-examined:

Q. How do you arrive at the value of this lot in 1860?

A. Well, I at one time owned a lot up there, and at that time, knowing the property on that side of the street was way below par, as we call it, after the big fire there in '71, I have quite an idea what property was worth, as I priced that lot. It was worth more in 1864

than it was in 1860. Property was not so valuable on that side of the street as it was on the other side.

Redirect:

Q. In asking you as to the value of this lot — refer to the year 1860 and its value at that time. Did you so understand me?
A. I understood you from 1860 to 1864.
Q. What was its value in 1860?
A. Well, I suppose I couldn't change the figures much. I know it come up some after the fire. I couldn't refer back to it at that time, 1860.

Cross-examined:

Q. Isn't your estimate, after this lapse of time, largely a matter of guess-work?
A. Well, their-'s no doubt but what I knew at the time, and certainly when you have to think back so far you make matters a little over or a little under, but I think I have quite a fair impression how things worked along there.
Q. But it is pretty difficult to think over every year from 20 to 25 years ago and tell what a particular lot was worth in that way, isn't it?
A. I should think it was.

ISAAC EDWARDS.

Subscribed and sworn to before me this twenty-fifth day of June, A. D. 1886.

JAMES F. SANDFORD,
Special Commissioner.

519 *Exhibits to Testimony of M. L. Arnold.*

EXHIBIT 1.

$200. AMBOY, *June 10th*, 1857.

Five years after date I promise to pay to the order of R. W. Clapp two hundred dollars, with interest, payable annually, value received.

his
WILLIAM x JONES.
mark.

Witness:
H. S. PERRY.

(Endorsed:) Without recourse to me. R. W. Clapp.

EXHIBIT 2.

$200. AMBOY, *June* 10*th*, 1857.

One year after date I promise to pay to the order of R. W. Clapp two hundred dollars, with interest, value received.

his
WILLIAM x JONES.
mark.

Witness:
H. S. PERRY.

(Endorsed:) Without recour-e to me. R. W. Clapp.

EXHIBIT 3.

$200. AMBOY, *June* 10*th*, 1857.

Three years after date I promise to pay to the order of R. W. Clapp two hundred dollars, with interest, payable annually, value received.

his
WILLIAM x JONES.
mark.

Witness:
H. S. PERRY.

(Endorsed:) Without recourse to me. R. W. Clapp.

520 EXHIBIT 4.

$200. AMBOY, *June* 10*th*, 1857.

Two years after date I promise to pay to the order of R. W. Clapp two hundred dollars, with interest, payable annually, value received.

his
WILLIAM x JONES.
mark.

Witness:
H. S. PERRY.

(Endorsed:) Without recourse to me. R. W. Clapp.

EXHIBIT 5.

$200. AMBOY, *June* 10*th*, 1857.

Four years after date I promise to pay to the order of R. W. Clapp two hundred dollars, with interest, payable annually, value received.

his
WILLIAM x JONES.
mark.

Witness:
H. S. PERRY.

(Endorsed:) Without recourse to me. R. W. Clapp.

EXHIBIT 6.

$1,000. AMBOY, *Nov. 29th*, 1856.

Three years after date I promise to pay to the order of R. W. Clapp one thousand dollars, value received, with interest at ten per cent., payable annually.

CYRUS CRAIG.

(Endorsed:) Without recourse to me. R. W. Clapp.

521 EXHIBIT 7.

$1,000. AMBOY, *Nov. 29th*, 1856.

Four years after date I promise to pay to the order of R. W. Clapp one thousand dollars, value received, with interest at ten per cent., payable annually.

CYRUS CRAIG.

(Endorsed:) Without -ecourse to me. R. W. Clapp.

EXHIBIT 8.

$1,400. AMBOY, *Nov. 29th*, 1856.

Five years after date I promise to pay to the order of R. W. Clapp one thousand four hundred dollars, value received, with interest at ten per cent, interest payable annually.

CYRUS CRAIG.

(Endorsed:) Without recourse to me. R. W. Clapp.

522 EXHIBIT 9.

UNITED STATES OF AMERICA, *State of New York*, } *ss:*

On the fifth day of February, 1858, at the request of the holders, I, Richard A. McCurdy, a notary public, duly admitted and sworn, dwelling in the city of New York, did present the original draft or bill hereunto annexed to a person having charge of the office of Alfred Clapp, No. 142 Broadway, New York, and demanded payment, who refused to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer and endorsers of the said draft as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interest already incurred and to be hereafter incurred for want of payment of the same.

Thus done and protested, at the city of New York aforesaid, in the presence of John Doe and Richard Doe, witnesses.

In testimonium veritatis.

[SEAL.] RICHARD A. McCURDY,
Notary Public.

UNITED STATES OF AMERICA, } ss:
State of New York, }

I, Richard A. McCurdy, a notary public, duly admitted and sworn, dwelling in the city of New York, do hereby certify that on the sixth day of February, 1858, notice of the protest of the before-mentioned draft or bill was mailed, prepaid, to R. W. Clapp, at Amboy, Ills., and notice to E. W. McLean delivered to the holder.

RICHARD A. McCURDY,
Not-ry Pub.

523 EXHIBIT 10.

$1,000. AMBOY, ILLS., *December 4th*, 1857.

Sixty days after date pay to the order of E. W. McLean one thousand dollars, value received, and charge the same to account of

R. W. CLAPP.

To Alfred Clapp, No. 142 Broadway, New York.

(Endorsed:) Pay to T. D. Pelton. E. W. McLean. T. D. Pelton. Without recourse. Received on the within draft two hundred and fifty-four dollars. March 23, 1859.

524 EXHIBIT 11.

NEW YORK CITY, *May 15th*, 1863.

M. L. Arnold, Amboy, Ill.

DEAR SIR: Your letter of the 20th ult. is received and contents noted. About those notes & securities left in your hands by McLean you write that they are worthless or nearly so. I think something can be made off from them. You sell them and make the most you can; apply on mortgage I gave McLean. Any arrangement you can make with my brother Henry to compromise the matter will be satisfactory to me. I have some land in Whiteside county which I would like to let you have. I cannot now say when I will be in Amboy; will try and see you when I am there again. If you compromise the matter with Henry, have McLean release the mortgage from record.

Yours truly, R. W. CLAPP.

525 EXHIBIT 12.

FOUNTAIN HOTEL, LIGHTH STREET,
BALTIMORE, MD., *June 20th*, 1863.

M. L. Arnold.

DEAR SIR: Your favor of 10th inst. I received at Washington. In reply I would say that I wrote you from New York about the middle of last month, giving you full particulars how to proceed. I think it would be well to sell the Craig property, get the most you can, and apply on the McLean mortgage. The notes, you say, are worthless, or nearly so, except what can be made off the Craig property. I see no other way for you to do in the case but to make what

you can out of the securities and apply on mortgage and fall back on the land to make up deficiency. I think it would be well for you to see my brother Henry again and see if you can in any way effect a compromise. He has written to me recently stating that you had been to see him and had offered to settle for fifty cents on the dollar, but that you had effected no settlement, although he thought he would be able to do so. As I wrote in my last, do the best you can, and any compromise you can make with Henry will be satisfactory to me. I want the matter closed up.

I remain respectfully yours, R. W. CLAPP.

526 EXHIBIT 13.

This indenture, made this tenth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, between Ruggles W. Clapp and Emily, his wife, of Amboy, in the county of Lee and State of Illinois, parties of the first part, and E. W. McLean, of Great Barrington, State of Massachusetts, party of the second part, witnesseth:

That the said part of the first part, for and in consideration of the sum of two thousand dollars paid by the said party of the second part, the receipt of which is hereby acknowledged, doth by these presents grant, bargain, and sell unto the said party of the second part, his heirs and assigns, the following-described tract or parcel of land, situated in the county of Lee and State of Illinois, to wit:

The southeast quarter of the southeast quarter of section No. thirty (30), in township No. twenty (20) north, range eleven (11) east, of the fourth principal meridian; also the east half of the northeast quarter of the southwest quarter of section No. thirty-six (36), township No. twenty (20), range ten (10) east of the fourth principal meridian, containing in all sixty acres of land, be the same more or less, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining:

To have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever; and the said parties of the first part, for themselves and their heirs, executors, and administrators, doth hereby covenant to and with the said party of the second part, his heirs and assigns, that they are well seized of the premises above conveyed as of a good and indefeasible estate in fee simple, and have good right to sell and convey the same in manner and form
527 as aforesaid; that they are free from all incumbrances, and that the above-bargained premises in the quite and peaceable possession of the said party of the second part, his heirs or assigns, against the claim of all persons whomsoever they will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

RUGGLES W. CLAPP. [SEAL.]
EMILY CLAPP. [SEAL.]

Signed, sealed, and delivered in presence of—
H. S. PERRY.

UNITED STATES OF AMERICA, } ss:
State of New York, }

I, Richard A. McCurdy, a notary public, duly admitted and sworn, dwelling in the city of New York, do hereby certify that on the sixth day of February, 1858, notice of the protest of the before-mentioned draft or bill was mailed, prepaid, to R. W. Clapp, at Amboy, Ills., and notice to E. W. McLean delivered to the holder.

RICHARD A. McCURDY,
Not-ry Pub.

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To Alfred Clapp, No. 142 Broadway, New York.

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Yours truly, R. W. CLAPP.

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BALTIMORE, MD., *June 20th*, 1863.

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you can out of the securities and apply on mortgage and fall back on the land to make up deficiency. I think it would be well for you to see my brother Henry again and see if you can in any way effect a compromise. He has written to me recently stating that you had been to see him and had offered to settle for fifty cents on the dollar, but that you had effected no settlement, although he thought he would be able to do so. As I wrote in my last, do the best you can, and any compromise you can make with Henry will be satisfactory to me. I want the matter closed up.

I remain respectfully yours, R. W. CLAPP.

526 EXHIBIT 13.

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That the said part of the first part, for and in consideration of the sum of two thousand dollars paid by the said party of the second part, the receipt of which is hereby acknowledged, doth by these presents grant, bargain, and sell unto the said party of the second part, his heirs and assigns, the following-described tract or parcel of land, situated in the county of Lee and State of Illinois, to wit:

The southeast quarter of the southeast quarter of section No. thirty (30), in township No. twenty (20) north, range eleven (11) east, of the fourth principal meridian; also the east half of the northeast quarter of the southwest quarter of section No. thirty-six (36), township No. twenty (20), range ten (10) east of the fourth principal meridian, containing in all sixty acres of land, be the same more or less, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining:

To have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever; and the said parties of the first part, for themselves and their heirs, executors, and administrators, doth hereby covenant to and with the said party of the second part, his heirs and assigns, that they are well seized of the premises above conveyed as of a good and indefeasible estate in fee simple, and have good right to sell and convey the same in manner and form
527 as aforesaid; that they are free from all incumbrances, and that the above-bargained premises in the quite and peaceable possession of the said party of the second part, his heirs or assigns, against the claim of all persons whomsoever they will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

RUGGLES W. CLAPP. [SEAL.]
EMILY CLAPP. [SEAL.]

Signed, sealed, and delivered in presence of—
H. S. PERRY.

STATE OF ILLINOIS, } ss:
County of Lee, }

On this tenth day of December, 1857, personally appeared before me, Hiram S. Perry, a notary public in and for said county, Ruggles W. Clapp, to me personally known to be the person whose name is subscribed to the above deed as having executed the same, and acknowledged that he had freely executed the same for the uses and purposes therein expressed; and Emily Clapp, wife of the said Ruggles W. Clapp, to me personally known to be the person whose name is subscribed to the same deed, also appeared before me and was by me acquainted with the contents of the same and examined separate and apart from her said husband whether she executed the said deed and relinquished her dower to the lands and tenements therein mentioned voluntarily, freely, and without compulsion of her said husband, and acknowledged that she executed the same and relinquished her dower to the lands and tenements mentioned voluntarily and freely and without the compulsion of her said husband.

Given under my hand and seal the day and year aforesaid.

[NOTARIAL SEAL.] HIRAM S. PERRY,
Notary Public.

528 (On the back of said exhibit is endorsed as follows:) Warranty deed. Ruggles W. Clapp & wife to E. W. McLean.

STATE OF ILLINOIS, }
County of Lee. }

I, the undersigned, clerk of the circuit court of said county and *ex officio* recorder, do hereby certify that the within deed was filed in said office for record on the eleventh day of March, A. D. 1858, at 3.30 o'clock p. m., and that the same was this day duly recorded in Book T of Deeds, at page 186.

In testimony whereof I have hereunto set my name, in said county, on this — day of ——, A. D. 18—.

GEO. E. HASKELL, *Clerk.*

529 EXHIBIT 14.

This indenture, made this tenth day of December, in the year of our Lord one thousand eight hundred and fifty-seven, between Ruggles W. Clapp and Emily, his wife, of Lee county, Illinois, and E. W. McLean, of Great Barrington, Massachusetts, of the second part, witnesseth: The said party of the first part, for and in consideration of three thousand dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, has remised, released, sold, conveyed, and quitclaimed, and by these presents do demise, release, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which the said party

of the first part have in and to the following-described lot, piece, or parcel of land, to wit:

The east half of the southeast quarter of section six (6) and a part of the southeast quarter of the northeast quarter of the same section, to wit: Commencing at the southeast corner of said N. E. quarter, thence west on half-section line eighty rods, thence north on line of said forty-acre tract fifty-nine rods, thence south on section line fifty-five rods to place of beginning—37½ acres.

Also a part of the southwest quarter of the southwest quarter of section five (5), to wit: Commencing at the southwest corner of said section, thence north on section line 80 rods, thence east on north line of said forty-acre lot 25 rods, thence south parallel to first line 80 rods to section line, 25 rods to place of beginning—12½ acres—in all 120 acres, all in town nineteen (19) N., range (10) east, 4 P. M., Lee county, Illinois. The party of the first part is to have the down wood and timber on the said land:

530 To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part hereunto set their hand and seal the day and year first above written.

RUGGLES W. CLAPP. [SEAL.]
EMILY CLAPP. [SEAL.]

Signed, sealed, and delivered in presence of—
H. S. PERRY.

STATE OF ILLINOIS, } ss:
Lee County, }

I, Hiram S. Perry, notary public in and for said county, in the State aforesaid, do hereby certify that Ruggles W. Clapp, personally known to me as the same person whose name is subscribed to the foregoing instrument of writing, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth; and the said Emily Clapp, wife of the said Ruggles W. Clapp, being by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me made known to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

531 Given under my hand and seal this tenth day of December, A. D. 1857.

[SEAL.] HIRAM S. PERRY,
Notary Public.

(On the back of said Exhibit 16 is the following:) Quitclaim deed. R. W. Clapp to E. W. McLean.

Exhibit 15.

This indenture, made this fourth day of June, in the year of our Lord one thousand eight hundred and sixty, between Wm. E. Ives and Susan, his wife, of the county of Lee and State of Illinois, party of the first part, and Edwin W. McLean, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of two thousand dollars, paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, and sell unto the said part- of the second part, his heirs and assigns, the following-described tract or parcel of land, situated in the city of Amboy, in the county of Lee and State of Illinois, to wit:

A part of lot number five (5), in block number eleven (11), in said town (now city) of Amboy, commencing thirty-one feet (31) west of the northeast corner of said lot, running thence west eighteen feet (18); thence south on a line parallel with the west line of said lot to the alley; thence along the alley to the land conveyed to
532 J. D. Weddell; thence north along the west line of the said land conveyed to J. D. Weddell to the place of beginning. This conveyance is made subject to a deed of trust given by the party of the first part to David Welty, commissioner of swamp lands for the county of Lee, which is for the sum of four hundred dollars, the interes- on the same being paid up to the 4th day of March, — D. 1861, which deed of trust the said E. W. McLean agrees to pay and discharge on or before the 4th day of March, A. D. 1861—

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining:

To have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever; and the said party of the first part, for themselves and their heirs, executors, and administrators, do hereby covenant to and with the said party of the second part, his heirs and assigns, that they are well seized of the premises above conveyed as of a good and indefeasible estate in fee simple, and ha- good right to sell and convey the same in manner and form as aforesaid; that they are free from all incumbrances, and that the above-bargained premises in the quite and peaceable possession of the said party of the second part, his heirs and assigns, against the claim of all persons whomsoever they will warrant and forever defend, except as above specified.

In testimony whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

WILLIAM E. IVES. [SEAL.]
SUSAN IVES. [SEAL.]

Signed, sealed, and delivered in presence of—
E. J. IVES.

533 STATE OF ILLINOIS, } ss:
County of Lee, }

On this fourth day of June, 1860, personally appeared before me, Enos J. Ives, a notary public for Amboy, in and for said county of Lee, William E. Ives, who is to me personally known to be the person whose name is subscribed to the above deed as having executed the same, and acknowledged that he had freely executed the same for the uses and purposes therein expressed; and Susan Ives, wife of the said Wm. E. Ives, who is to me personally known to be the person whose name is subscribed to the same deed, also appeared before me and was by me made acquainted with the contents of the same and examined separate and apart from her said husband whether she executed the said deed and relinquished her dower to the lands and tenements therein mentioned voluntarily, freely, and without the compulsion of her said husband, and acknowledged that she executed the same and relinquished her dower in the lands and tenements therein mentioned voluntarily and freely and without the compulsion of her said husband.

Given under my hand and seal the day and year aforesaid.

[NOTARIAL SEAL.] ENOS J. IVES,
Notary Public.

On the back of said Exhibit 15 is the following indorsement: Warranty deed. William E. Ives to E. W. McLean. Also recorder's certificate in blank.

STATE OF ILLINOIS, } ss:
County of Lee, }

I, Isaac S. Boardman, clerk of the circuit court of said county and *ex officio* recorder, do hereby certify that the within deed was filed in said office for record on the sixth day of June, A. D. 1860, at 3 o'clock p. m., and that the same was this day duly recorded
534 in Book X of Deeds, at page 173.

In testimony whereof I have hereunto set my name at ——, in said county, on this — day of ——, A. D. 18—.

I. S. BOARDMAN, *Clerk.*

EXHIBIT 16.

Copy.

This indenture, made this eleventh day of November, in the year of our Lord one thousand eight hundred and sixty-seven, between E. W. McLean and wife, of Great Barrington, Massachusetts, parties of the first part, and Martin L. Arnold, of Amboy, Lee county, State of Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of two hundred dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said par*ties* of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, con-

veyed, aliened, and confirmed, and by these presents do*es* grant, bargain, sell, remise, release, convey, alien, and confirm, unto the said party of the second part and to his heirs and assigns forever all the following-described lot, piece, or parcel of land, situate in the county of Lee and State of Illinois and known and described as follows, to wit:

The southeast quarter of the southeast quarter of section No. thirty (30), in township No. (20) twenty north, range eleven (11) east, of the fourth principal meridian; also the east half of the northeast quarter of the southwest quarter of section No. thirty-six (36), township No. twenty (20) north, range ten (10) east, of the fourth principal meridian, containing in all sixty acres of land, be the same more or less:

535 To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heir and assigns forever.

And the said E. W. McLean and wife, party of the first part, for their heirs, executors, and administrators, do*es* covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivering of these presents that they are well seized of the premises above conveyed as of a good, sure, perfect, absolu-e, and indefeasible estate of inheritance in law in fee simple, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind and nature soever; and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said parties of the first part shall and will warrant and forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

EDWIN W. McLEAN. [SEAL.]
JULIA H. McLEAN. [SEAL.]

Signed, sealed, and delivered in presence of—
EUGENE S. THACHER.

[50-ct. stamp, cancelled. E. W. M. Nov. 11th, 1867.]

536 STATE OF MASSACHUSETTS, } *ss*:
Berkshire County, }

I, Isaac Seeley, a notary public in and for said county, in the State aforesaid, do hereby certify that Edwin W. McLean and Julia H. McLean, —are personally known to me to be the same persons whose names — subscribed to the foregoing warranty deed, appeared before me this day in person and acknowledged that *he* signed, sel*a*ed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth; and the said

Julia H. McLean, wife of the said Edwin W. McLean, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower and all right, title, and interest to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws so called without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this twenty-ninth day of November, A. D. 1867.

[NOTARIAL SEAL.] ISAAC SEELEY,
Notary Public.

(On the back of said Exhibit 16 is the following:) Warranty deed. Edwin W. McLean to Martin L. Arnold. Also recorder's certificate in blank.

537 EXHIBIT 17.

GREAT BARRINGTON, MASS., *Nov.* 29, 1867.

Mr. M. L. Arnold.

DEAR SIR: Yours of the 25th inst. is received. I have executed the deed and enclose it to you. Your proposition was to pay me $150.00 one year from next spring, which I suppose means the 1st of April; you did not say whether with interest or not, but I suppose with int. and you to pay all taxes which have been or may be assessed on the land, which you say you have already paid to the present year, about $50.

You also say that if you can realize so that you can pay more than the $150 you will do so. I hope you will do well with the land, make something out of it, as I have no doubt but what you will, you being on the ground, where you can watch your chance.

You will please forward me your note for the $150; also your receipt for all monies paid for taxes for me, and also your receipt in full for your services. The deed sent for me to execute to Hitchcock I will send in time with the bond. In the bond it does not read, east of the fourth principal meridian, but perhaps the deed ought to read so. You can tell. You have written, the undivided one-third. Ought it not to read, my undivided one-third, as it reads in the bond? As it now reads in the deed it does not say whose undivided ⅓; also you have left out the name of the town, county, and State. The taxes he was to pay after the year 1864. It is well to have that put into the deed about the taxes, so that he cannot have any loophole to get rid of paying them. The name is Charles I. instead of Chas. J. I will send you the deed and bond, as I want to be
538 sure and have it right before I execute it. Please see that it is all right and return it with the bond and your note and receipt, &c., and greatly oblige; whenever you come East hope you

will come and stop with me and give me a chance to thank you, to say the least, for the interest you have taken in my matters.

Yours truly, E. W. McLEAN.

On the whole, I think it is not necessary to send the bond, as I have explained all that is necesaary. The bond reads, my undivided one-third interest in the southwest quarter of section twelve (12), town. twenty (20), range ten (10), in the town of Amboy, county of Lee and State of Illinois. The meridian is left out, but I suppose ought to be in.

539 EXHIBIT 18.

GREAT BARRINGTON, *April* 25, 1868.

M. L. Arnold, Esq.

MY D'R SIR: Since writing you yesterday I have been thinking that, under all the circumstances of delay, trouble, &c., we have had, and as he has forfeited the whole, that it would not be to- much to charge them $300, so I have written a line to that effect that you can show him in case you get it in time; but, still, I want you to arrange it with him the best you can. If he will not stand that *can't* am't, get the best terms you can & close the thing up; send draft to my order; am sorry to hear that your daughter is so low; hope she may be spared to you.

Truly your friend, E. W. McLEAN.

540 EXHIBIT 19.

GREAT BARRINGTON, *April* 25, 1868.

M. L. Arnold, Esq.

DEAR SIR: Yours 21st inst. is at hand, with deed, with request of C. I. Hitchcock to have it made to Cephas Clapp. I have executed the deed and return to you, to be delivered when he shall pay you $300.00, which I think will be about right to pay for all trouble & delay & expense we have been at, and, as he has forfeited the whole am't by not paying when due, I think he ought to be perfectly satisfied to do that much.

Resp'y yours, E. W. McLEAN.

541 EXHIBIT 20.

GREAT BARRINGTON, *Nov.* 18, 1867.

M. L. Arnold, Esq.

DEAR SIR: Yours of 11 inst. is rec'd, with blank deed to fill out. If I thought best to accept of your proposition, of course I shall have to leave the whole matter with you in regard to the land, as I have written before. I want to close it out the best I can and I know you will allow all that you can afford for it, and I will accept of your proposition to pay me $150 at the time named and close up the concern and call all our matters square, you paying all the taxes, what you have paid and what is to pay, this year and call all square

for what you have done for me up to the present time, and also to se-tle with Hitchcock when the last payment is due. If you can afford to do that I should be glad, as you are aware out of some $5,000 I shall only get about $1,000. I don't know how Clapp's deed to me reads, but suppose you have copies from them. Please forward me Clapp's deeds by return mail. My wife is now sick, but I will execute the deed soon and forward you in a few days. Did you mean to pay me interest on the $150 or only the $150 at the time named in your proposition? You will, of course, send on your note after you get the deed.

Please let me hear from you by return mail, with the old deeds of Clapp's, &c. I hope some day to see you, and that I may be able to reciprocate your favors at some time.

Yours truly, E. W. McLEAN.

542 EXHIBIT 21.

GREAT BARRINGTON, *Oct.* 17, 1867.

Mr. M. L. Arnold.

DEAR SIR: Yours of the 13th inst. is just received, and I hasten to reply. As regards the 40 and 20 acres, I think it had better be sold for something rather than pay taxes any longer and get no income from it. As regards the price, if we sell we shall have to take what we can get for it. You want I should name the lowest price you should take for it and let it go. I will leave that with you. Exercise your own judgment in the matter and do as you would if the land was yours and take the best offer you can get and let it go.

I need all that I can get for it, but, as you intimate, think it better to sell it for what we can get rather than pay takes on it any longer. As regards the deed for Hitchcock in the spring, I wish you would fill out a blank deed and send on for me to execute, as you understand all about the trade and how the deed should read.

If you will do so in time and send it on I will execute it and return to you in time. I shall be *gald* when we get these matters all closed up, and I think you will have *had.* I have been swindled, I and you knew.

Yours truly, E. W. McLEAN.

543 EXHIBIT 22,

GREAT BARRINGTON, *April* 2, 1868.

M. L. Arnold, Esq.

DEAR SIR: Yours of the 23rd inst. came duly to hand. In reply will say that I sent you the deed about the time you write your letter and presume you rec'd it about the same time I rec'd your letter. I trust that Hitchcock will pay at the time when due, and that it will all be right. R. W. Clapp was here in the winter, about the last of Dec., I think. I saw him and had some talk with — about matters. He said that Ives had given him a hard one—had swindled him bad. I did not say anything to him about the mort-age

that we thought of holding on to the land, or trying it, because I did not think it would do any good, as I know well enough that I could not do anything with — more than get a promise, and that he claimed that he had paid Ives, and that Ives had not been true to me nor him. You say that R. W. was in your place but did not call to see you, as he had promised his brother he would. I do not think he wanted to see you about the matter or that he will call when he comes there again; but perhaps he will come around all right. I have not got much confidence in him. It seems that Henry is uneasy about the mortgage, and perhaps you can do something with him; that he can get R. W. to do something in the way of compromising rather than to have the mortgage closed. It is true that I have never discharged the mortgage, and that out of some $6,000 have rec'd in all some $1,250. I ought to get more if the law will allow it, and I do hope you will be able to do something with it *get* on the terms which I have proposed before. I did not get anything out of R. W. when he was here that would be of any benefit—not so much as a promise. I know that you will put the thing through if it
544 can be done. And why should it not be? I ought to hold enough on that mortgage to make me good, less the am't I have already realized, which, as you know, is only that $1,250. Was sorry to hear that your daughter was sick, but glad to hear that she is improving; hope she will soon be well again. We are having fine spring weather after our cold winter, and the prospect is now of an early spring and good crops of grain and grass.

Yours truly, E. W. McLEAN.

545 EXHIBIT 23.

GT. BARRINGTON, *Jan'y* 30, 1867.

M. L. Arnold, Esq.

DEAR SIR: Your letter of the 18th inst. came duly to hand. I was thinking of you a few days before I rec'd it; that I had not heard from you in some time. You want to know whether I intend to do anything with Ives; and, if not, what I will give, over and above the expense and cost, of what can be made in the matter. If I was there on the ground I should feel more like taking hold of the matter; but as it is, I being here so far off and having lost so much money there, I do not feel like paying out any money for expense of prosecuting, &c. I knew he ought to be made to pay, but I had rather lose than to get into the law with any one, especially such as he is. As you write to know what share I will give over and above cost & expense of prosecuting or what is made, I will say that I will give one-half; but I am to be to no expense or trouble in the matter—that is, I am to have one-half of whatever is made over and above expenses, you paying all expenses whether anything is made or not, and in case anything is made I have one-half.

I hope you will be able to sell the 40 acres at some fair price. I suppose Hictchcock will make the payment in April without doubt.

You have all the facts in regard to Ives and will know much better

than I whether it is any object for you to take hold of it or not. I wish justice could be done.

Yours truly, E. W. McLEAN.

546 Complainant offers in evidence the paper referred to in the testimony of Lot Chadwick, Martin L. Arnold, and others as the abstract of the land involved in this suit, which was produced at the time Arnold was first at Chadwick's house and of which a copy is said by some of the witnesses to have been made, which paper is attached as Exhibit 1.

EXHIBIT 1 OF COMPLAINANTS' TESTIMONY IN McLEAN *et al.* — CHADWICK *et al.* James F. Sandford, Examiner.

DIXON, *Dec.* 5, 1855.

I, I. S. Boardman, recorder for the county of Lee and State of Illinois, do hereby certify that the northwest ¼ of the S. W. ¼ and the W. ½ of the N. W. ¼ of section 34, and the northeast ¼ S. E. ¼ of section 33, in town. 21 north, range 11 east, and the E. ½ of the N. W. ¼ of sec. 33, and the E. ½ of S. W. ¼ of section 28, in town. 21, range numbered 11 east, of the fourth P. M., and the N. E. ¼ of sec. 33, town. 21, range 11, are, as appears of the record of deeds and mortgages in my office, free from encumbrances.

I. S. BOARDMAN,
By GEO. HUDSON.

The office of the recorder for the county of Lee, State of Illinois.

DEC. 5, A. D. 1855.

This day was filed in my office 2 deeds from Jason Clapp and Edwin Clapp respectively to Ruggles W. Clapp, conveying the above-described land.

I. S. BOARDMAN,
By GEO. HUDSON.

547 Complainants offer in evidence the following letter, marked Exhibit 2:

AMBOY, LEE CO., ILLS., *Ap'l* 8, 1857.

E. W. McLean, Esq., Gt. Barrington, Mass.

DEAR SIR: Yours of March 31st received and contents noted. I am doing all that lays in my power to raise funds for you, as I know you must need them very much in your business. I think I shall be at your place in about two weeks from this time, as I intend going East. I will, if it is a possible thing, raise you the first note and pay it over to Ives forthwith. Money is extremely hard to be got hold of here now. You may look for a part of your money from me in a very short time. Henry drew out and spent about twenty-three hundred dollars in cash and goods, which is one thing that keeps me back so on your matter. Your money is all safe & is bound to come sooner or later. Respects to wife & family.

Yours truly, R. W. CLAPP, *J. P.*

Exhibit 2 of complainants' testimony, McLean *et al. vs.* Chadwick *et al.*

JAMES F. SANDFORD, *Examiner.*

548 Complainant introduced the following four sheets, marked Exhibit —.

COMMONWEALTH OF MASSACHUSETTS, *Berkshire County,* } *ss:*

[SEAL.]

I, E. T. Slocum, register of probate and insolvency for said county and the only person having the custody and control of the records of probate and insolvency and all the records, books, papers, documents and files belonging and appertaining to the court of insolvency and the court of probate for said county and all the files and records of commissioners of insolvency which relate to insolvent estates—

Do certify that at a court of probate holden at Adams, in and for said county, on the third day of March, in the year of our Lord one thousand eight hundred and seventy-five, Charles J. Taylor, of Great Barrington, in the county of Berkshire and State of Massachusetts, was duly appointed the only administrator of the estate of Edwin W. McLean, late of said Great Barrington, deceased, intestate, and the instruments hereto annexed are true and examined copies, to wit, of the petition filed in said court for the appointment of said administrator, the decree of said court appointing said administrator, the bond filed by said Taylor with the approval of the judge of said court thereon, and the letter of administration issued by said court to said Taylor, and all the same instruments are true and examined copies of all the records of the originals of which said instruments are copies; and the said Charles J. Taylor appeared at said court and took upon himself that trust by giving bond according to law, which appointment is still in force, as appears of record, and he is the only person authorized to act in and is still acting in said office, and all said acts were done in accordance with the constitution and laws of Massachusetts, and J. T. Robinson, whose signature
549 appears on the copies hereto annexed, was at all times when he signed the originals thereof judge as thereon represented to be and the only presiding judge of said courts.

In witness whereof I have hereunto set my hand and the seal of said court this twenty-first day of June, in the year of our Lord one thousand eight hundred and eighty-three.

E. T. SLOCUM,
Register as Aforesaid.

To the honorable the judge of the probate court in and for the county of Berkshire:

Respectfully represents Julia H. McLean, of Gt. Barrington, in the county of Berkshire, that Edwin W. McLean, of Gt. Barrington, who last dwelt in Gt. Barrington, in said county of Berkshire, died on

the twenty-fifth day of February, in the year of our Lord eighteen hundred and seventy-five, intestate, possessed of goods and estate remaining in said county to be administered, leaving a widow, whose name is Julia H. McLean, and as his only next of kin the persons whose names, residence, and relationship to the deceased are as follows, viz:

Two sons, George E. McLean, of New Labanon, New York, & William B. McLean, of said Gt. Barrington, & a daughter, Minnine R. McLean, of said Gt. Barrington.

That your petitioner is widow as aforesaid & declines to act as administratrix. Wherefore your petitioner prays that Charles J. Taylor, of said Gt. Barrington, may be appointed administrator of the estate of said deceased.

Dated this second day of March, A. D. 1875.

JULIA H. McLEAN.

550 COMMONWEALTH OF MASSACHUSETTS, } ss:
Berkshire County, }

At a probate court holden at Adams, in and for said county of Berkshire, on the third day of March, in the year of our Lord one thousand eight hundred and seventy-five, the petition of Julia H. McLean, filed this day, praying that Charles J. Taylor, of said Great Barrington, be appointed administrator of the estate of Edwin W. McLean, late of Great Barrington, in the county of Berkshire, deceased, intestate, having been considered, and it appearing that the petitioner is the widow of the deceased, it is decreed that Charles J. Taylor be appointed administrator of said estate, first giving bond, with sufficient sureties, for the due performance of said trust.

J. T. ROBINSON,
Judge of Probate Court.

(Endorsed:) Filed March 3rd, 1875. Decree made at Adams March 3rd, 1875. Recorded in "Administrations" Book No. 8, page No. 584.

551 (No. 2.)

(*Administrator's Bond.*)

Know all men by these presents that we, Charles J. Taylor, of Great Barrington, in the county of Berkshire, as principal, and George Church & Justin Dewey, Jr., of Great Barrington, as sureties, and all within the Commonwealth of Massachusetts, are holden and stand firmly bound and obliged unto James T. Robinson, Esquire, judge of the probate court in and for the county of Berkshire, in the full and just sum of twenty thousand dollars, to be paid to the said judge and his successors in said office; to the true payment whereof we bind ourselves and each of us, our and each of our, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals. Dated this the third day of March, in the year of our Lord one thousand eight hundred and seventy-five.

The condition of this obligation is such that if the above-bounden Charles J. Taylor, administrator of the *eatet* of Edwin W. McLean, late of Great Barrington, in said county of Berkshire, deceased, intestate, shall first make and return into said probate court within three months after his appointment a true inventory of all the real estate and all the goods, chattels, rights, and credits of said deceased which have or shall come to his possession or knowledge;

Second. Administer according to law all the goods, chattels, rights, and credits of said deceased and the proceeds of his real estate that may be sold for the payment of his debts which shall at any time come to the possession of said administrator or any other person for him;

Third. Render upon oath a true account of his adminis-
552 tration at least once a year and at such other times as shall be required by said court until his trust is fulfilled, unless excused therefrom in any year by the judge of probate;

Fourth. Pay any balance remaining in his hands upon the settlement of his accounts to such persons as said court shall direct; and,

Fifth. Deliver the letters of administration into said court in case any will of said deceased is hereafter duly proved and allowed—

Then this obligation to be void; otherwise to remain in full force and virtue.

CHAS. J. TAYLOR. [L. S.]
GEO. CHURCH. [L. S.]
JUSTIN DEWEY, JR. [L. S.]

Signed, sealed, and delivered in presence of—
GEO. E. McLEAN.

BERKSHIRE, *ss:*

MARCH 3, 1883.

Examined and approved.

J. T. ROBINSON,
Judge of the Probate Court.

(Endorsed:) Recorded in "Administrations" Book No. 8, page 584.

553 No. 3.

COMMONWEALTH OF MASSACHUSETTS, *Berkshire,* } *ss:*

Probate Court.

[L. S.] To Charles J. Taylor, of Great Barrington, in the county and Commonwealth aforesaid, Greeting:

Trusting in your care and fidelity, I, James T. Robinson, Esquire, judge of the probate court in and for said county of Berkshire, by virtue of the power and authority in me, do hereby ordain, constitute, and appoint you to be administrator of the estate of Edwin W.

McLean, late of Great Barrington, in said county of Berkshire, deceased, intestate.

And you are ordered to make and return into said probate court, within three months from the date hereof, a true inventory of all the real estate and all the goods, chattels, rights, and credits of said deceased which have or shall come to your possession or knowledge.

To administer according to law all the goods, chattels, rights, and credits of said deceased and the proceeds of his real estate that may be sold for the payment of his debts which shall at any time come to your possession or that of any other person for you.

To render upon oath a true account of your administration at least once a year and at such other times as shall be required by said court until your trust is fulfilled, unless excused therefrom in any year by the judge of probate.

To pay any balance remaining in your hands upon the settlement of your accounts to such persons as said court shall direct.

To deliver these letters of administration into said court in case any will of deceased shall be hereafter duly proved and allowed.

554 And also within three months to cause notice of your appointment to be posted in two or more public places in the city or town in which said deceased last dwelt, and cause the same to be published three successive weeks in the Berkshire Courier, a newspaper printed at Great Barrington, and within one year return your affidavit of having given such notice, with a copy thereof, to the probate office.

In witness whereof I have hereunto set my hand and caused the seal of said court to be affixed, at Adams, this third day of March, in the year of our Lord one thousand eight hundred and seventy-five.

J. T. ROBINSON,
Judge of Probate Court.

Countersigned.

A. J. WATERMAN, *Register.*

555 It is stipulated by the solicitors of the respective parties to this suit that in the suit of Lot Chadwick against Edwin Clapp, referre- to by witnesses, the bill of complaint was filed September fourteenth, A. D. 1869, and that judgment was rendered May 13, 1859, in the Lee county circuit court for $622.75 on the notes of Cyrus Craig, referred to in evidence, and that the same is unsatisfied of record, which judgment was in favor of said Edwin W. McLean, and that Ives & Ives were attorneys for said McLean in obtaining said judgment.

Complainants offer in evidence certain entries in the record book of school district number four, in the town of Amboy, of which the following are correct copies, the original to be produced on the hearing of this cause if desired by either party :

556 EXHIBIT 4 OF COMPLAINANTS' TESTIMONY IN MCLEAN *et al.* *vs.* CHADWICK *et al.* James F. Sanford, Examiner.

Oct. 1, 1857.—Bonds issued to Wm. E. Ives, payable April 1st, 1858, for building school-house as follows, to wit:

Cancelled May 1st, 1858, one for, cancelled May (?), 1858			600 00
All are cancelled August 13th, 1858.	"	two "	600 00
	"	three	600 00
	"	four, endorsed May 1st, 1858, $262.50 & interest on said am't.	601 50
	"	five	476 50
	"	six, payable April, 1859	366 05
			$3,244 05

[Written across the face:] Cancelled and paid this 13th day of Aug'st, 1858.

557 EXHIBIT 5 OF COMPLAINANTS' TESTIMONY IN MCLEAN *et al.* *vs.* CHADWICK *et al.* James F. Sandford, Examiner.

MAY 1ST, 1858.

Issued bond of one thousand dollars to Ambrose & Little, payable April 1st, 1859, $1,000.

EXHIBIT 6 OF COMPLAINANTS' TESTIMONY IN MCLEAN *et al. vs.* CHADWICK *et al.*

JUNE 10TH, 1858.

JUNE 15.

Issued order to W. E. Ives for eighty dollars, pt. pay. on building S.-house, 80.00.

AUGUST 13TH.

Issued order to Wm. E. Ives for thirteen hundred fifty-two $\frac{60}{100}$ dollars, pt. pay. on building school-house, 1,352.60.

AUGUST 15.

Issued bond to W. E. Ives for four hundred sixty-one $\frac{55}{100}$ dollars, payable April 1st, 1859, 461.55, being bal. due for building school-house on settlement with the contractor; and the house was accepted, & the said contractor is discharged from further liability on his contract.

558 EXHIBIT 7 OF COMPLAINANTS' TESTIMONY IN MCLEAN *et al.* *vs.* CHADWICK *et al.*

AMBOY, *March 4th*, 1859.

C. 18th.

Have this day given Ambrose & Little 8 bonds, of $100.00 each	800 00
6 bonds, of 200.00 each	1,200 00
Making in all	$2,000 00

The said bonds are given in lieu of the following bonds taken up: Ambrose & Little, of 1,000 & int.; S. Goldman, one of 600 & int.; also insurance of house, 30.4, & discount for these am'ts one year. 20.

559 EXHIBIT 8 OF COMPLAINANTS' TESTIMONY IN MCLEAN *et al.* *vs.* CHADWICK *et al.* James F. Sandford, Examiner.

Complainant offers in evidence the testimony of Lot Chadwick in the case of said Lot Chadwick against Edwin Clapp, Mary M. Clapp, taken at the hearing of said cause at the October term, A. D. 1872, of the Lee county circuit court, as appears by the certificate of evidence filed in said cause, as follows:

LOT CHADWICK recalled by compl't:

I heard a portion of Mr. Arnold's testimony. I was present a part of the time during the conversation testified to by Arnold. It would be impossible for me to detail all of that conversation, but so far as my memory serves me Mr. Arnold said he had an abstract of the record he brought, as I understood him—an abstract of title to the lands included in the McLean mortgage. I think the conversation afterwards related entirely to that subject. I don't think I can recollect more than one thing, that there was such a mortgage; that the notes having been given up, the mortgage was worthless; have no recollection of anything said relating to Edwin, Jason, or Cephas Clapp.

I did not hear anything said about a lawyer. There was a great deal of the conversation which I did not understand on account of being deaf. My hearing has been effected for more than 20 years. If only one voice, could distinguish it very well; if more than one, it confuses me. I purchased the land March 1st, 1859. My recollection about the conversation is that it took place in the winter of 1867 & 1868. There had been no conversation about the purchase of the land at that time; had never had any such purchase in contemplation more than one week before the purchase.

560 EXHIBIT 9 OF COMPLAINANTS' TESTIMONY IN MCLEAN *et al.* *vs.* CHADWICK *et al.* James F. Sandford, Examiner.

Complainants offer in evidence the testimony of Henry Clapp, taken on the hearing of the case of Lot Chadwick against Edwin Clapp and Mary M. Clapp aforesaid, as appears by said certificate of evidence filed in said cause as follows:

Int. Please state what you did with the money Chadwick gave you for the Sherman Shaw note—what you did not expend in living.

Ans. I gave it to my wife; can't recollect how much of that money I gave to her.

Int. State how much you can remember.

Ans. Cannot state. I gave it to her on the farm; can't tell the

time; don't think any person present but wife and myself at the time; don't recollect who saw me in possession of the money besides Lot Chadwick & my wife; can't say how soon after receiving it from Chadwick I gave it to my wife; somewhere within two hours; don't know what she did with it; gave it to her to take care of. I did not want to know what became of it; don't recollect whether any of it was spent for living; hardly think I paid any bill with any of the money. I remember having said in Feb'y that I expended some of the money or good portion of it in living; have seen no portion of the money since giving it to my wife.

Int. What did you do with the Lee Co. bonds you said Chadwick gave you?

Ans. Gave them to my wife.

Int. When and where did you receive the ten Lee Co. bonds from Chadwick?

Ans. I received the money at Mr. Chadwick's house at the time I gave him the deed of the farm.

561 Int. How soon thereafter did you deliver these bonds to your wife?

Ans. Don't remember. I dismissed everything of business from my mind; could not give any definite time.

Int. Why have you dismissed these matters from your mind?

Ans. It is not material that one would burden the mind with every transaction that happened the last ten years. I delivered the bonds to my wife on the farm where I lived. I told her to take care of them; don't know what she did with them; have never seen them since that time; don't know where they now are. No one was present when I gave them to my wife. Albert Bodine was present when Chadwick gave me the bonds & the deed was made. I am not the owner of these bonds—I suppose I am not *I am not;* can't tell who is the owner.

Ques. Why do you think you are not the owner?

Ans. When I gave them to my wife I told her to get them cashed. She told me she did so. I have seen the money; have had all the money I wanted from my wife; paid bill with the money I got from her; never received any large sums. I paid bills to butcher, Byron Lefere. He is dead now. I used it for general living purposes; paid Mr. Trowbridge some money; don't know when—more or less for last 2 or 3 or 4 years; can't recollect others. I mean Trowbridge, merchant, of Lee Center.

—. Did she tell you to whom she sold the bonds? What use did you make of the bonds given to you by Chadwick, which formed a part of the $6,000?

Ans. I had plenty of friends to call on me for help. I consequently placed these bonds in the hands of my wife and told her to take care of them.

Ques. Do you wish me to understand that the money and
562 the bonds which you said you received from Chadwick for the notes which you gave Chadwick, which notes were surrendered to you by Chadwick at the time of the conveyance by you to him, was delivered by you to your wife?

Ans. Yes, sir. Shortly after the notes were delivered to my wife the money and bonds that Chadwick gave me for the notes were given at Chadwick's house; don't know but my wife was present; delivered the bonds to my wife but few hours after receiving them; delivered them, I think, on the farm; should not think I would let any one be present seeing me with that amount of money; don't know what she did with the money and bonds. I have seen all the money I wanted from my wife; have not seen any more than I called for; have seen none of the bonds; don't know, of my own knowledge, where the bonds now are. No other person than Chadwick and my wife saw me in possession of the money and notes.

Ques. Did you, on or about the month of Oct., 1871, at or near Lee Center, exhibit to R. W. Clapp or to E. L. Clapp, or both of them, any note or other written agreement of Mr. Chadwick's?

Ans. No, sir; I never had any written agreement or notes from Mr. Chadwick.

Ques. Look at these letters and see whether they are written by you.

Ans. Yes, sir.

563 United States Circuit Court, Northern District of Illinois.

JULIA H. MCLEAN *et al.*
vs.
LOT CHADWICK *et al.*

It is hereby stipulated and agreed by and between the parties to the above suit as follows, to wit:

That all depositions taken in said cause and on file may be opened by the clerk on request of the solicitor of either party.

That Charles J. Taylor, administrator of the estate of Edwin W. McLean, deceased, original complainant in said cause, be substituted as complainant in the place and stead of the heirs of said deceased.

That co-nsel for defendant Lot Chadwick hereby enter their appearance as solicitors for Abigail L. Haskell, administratrix of the estate of said Lot Chadwick, deceased, and that the bill of revivor heretofore filed by complainants stand as a bill of revivor against said administratrix to all intents and purposes as if she were defendant to said bill of revivor, and that the answer of said Lot Chadwick to said last-mentioned bill be treated in all respects as the answer of said administratrix.

That the evidence taken by Dwight Heaton, Esq., as examiner under order of said court entered Feb'y 1st, 1873, may be reported by J. F. Sandford, Esq., and that the testimony taken and to be taken by said Sandford (as examiner substituted by agreement of the parties to said cause to take said testimony in the place and stead of said Heaton after his death) be reported by said Sandford to all intents and purposes as if he were the examiner named in said rule or order of Feb-uary 1st, 1873; that the court may set

this cause for hearing on the 6th day of October next or as
564 soon thereafter as the court sees fit.

A. C. BARDWELL,
Sol. for Complainants.
S. H. BETHEA,
Sol. for Def'yt.

(Endorsed:) Filed Dec. 6, 1886. Wm. H. Bradley, clerk.

565 STATE OF ILLINOIS, } ss:
Lee County, }

In the United States Circuit Court, Northern District of Illinois.

JULIA H. MCLEAN *et al.*
vs.
LOT CHADWICK *et al.* } In Chancery.

To the honorable the judge of the United States circuit court, northern district of Illinois, in chancery sitting:

Per stipulation of counsel in the above-entitled cause, a copy of which is hereto attached, whereby it was referred to me, James F. Sanford, as a special examiner of this court, to take the proof of the respective parties to the above-entitled cause and to report the same (with the evidence taken therein by Dwight Heaton, Esq., as examiner of this court) to the court—

I, James F. Sanford, as said special examiner, do hereby respectfully report that, having been attended by the solicitors of the respective parties, I did, on the respective dates mentioned in the recitals of jurats of each respective deposition hereto attached, at the cities of Dixon and Amboy, in said county of Lee and
566 State of Illinois, proceed to take the proofs of the defendants in the said cause, and, the several witnesses attending having been severally sworn and examined by me, their testimony was taken in short-hand and afterwards written out, and, after having been written out as aforesaid, the testimony of each respective witness was read over by me to such witness, and thereupon such witness signed his or her respective deposition and was sworn to the same by me, and I have attached the same hereto and make the same a part of this report. Said testimony is numbered from page 304 to page 528, inclusive.

I would further report that during the taking of said testimony by me as aforesaid there was introduced by me and on behalf of the defendants to said cause certain exhibits, which I have marked respectively Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 of defendants' testimony, and I have attached the same, except such of said exhibits as have been by agreement of counsel hereto retained by counsel for the defendants to said cause, to, and I make the same a part of, this report.

I would further report that I have hereto attached and make the same a part of this my said report certain testimony and proofs numbered from page 1 to page 303, inclusive, by and on behalf of

the defendants to this cause as testimony taken on behalf of said defendants by Dwight Heaton, Esq., as examiner of this court.

I would further report that I have hereto attached and
567 made the same a part of this my said report certain exhibits introduced by and on behalf of the defendants to said cause during the taking of said testimony by said Dwight Heaton, Esq., as aforesaid. Said exhibits are marked respectively Exhibit A, B, C, D, E, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13.

And I would further report and certify that said several depositions numbered from page 304 to page 528, inclusive, together with said exhibits numbered from 1 to 9, inclusive, constitute all the testimony, evidence, and proofs taken or offered before me on the part of the defendants to said cause, and that said several depositions numbered from page 1 to page 303, inclusive, together with said exhibits marked A, B, C, D, E, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, constitute all the testimony, evidence, and proofs on the part of the defendants to said cause taken by Dwight Heaton, Esq., as aforesaid, that have come into my possession.

All of which is respectfully submitted.

Dated at Dixon, Illinois, this tenth day of November, A. D. 1886.

JAMES F. SANFORD,
Special Examiner.

December 3d, A. D. 1886.

By agreement of counsel, Exhibit A to the deposition of Henry Clapp, as taken by Dwight Heaton, Esq., as special examiner, which said exhibit had been overlooked by counsel, was by me this day attached to said deposition.

JAMES F. SANFORD,
Special Examiner.

568 THURSDAY, *October 16th*, 1873.

HENRY CLAPP, a witness of lawful age, produced and sworn on behalf of defendants, testified as follows:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Ans. Henry Clapp; age is fifty-one; I was born in '23; occupation, farmer; residence is now in Lee county, Illinois.

Interrogatory 2nd. Do you know the parties to this suit or either and which of them and how long have you known them respectively?

Ans. I know all the parties to this suit. Edwin McLean I have known ever since 1855; Lot Chadwick I have known for 27 years; William E. Ives, ever since about the time he came to Amboy, which was about the starting of that town; Nicholas Schufelt for the last four or five years; John Hinderman for the last 4 or 5 years; Conrad Mealhouse three or four years. Ruggles W. Clapp is a brother of mine; a younger brother. Emily B. Clapp was the wife of Ruggles W. Clapp. I have been acquainted with her from childhood.

Inter. 3rd. Are you acquainted with the lands mortgaged by R. W. Clapp to the said Edwin W. McLean and now in controversy?

Ans. I am.

Inter. 4. Have you ever occupied said lands? If so, when did your occupancy commence and how long did it continue?

Ans. I occupied the said lands from after and before the
569 entry of the lands from the United States Government. That was about 1852 or 1853 that I first went onto the lands. My occupancy continued up to 1868—to the time I sold them to Lot Chadwick.

Inter. 5. State the circumstances under which your occupancy commenced and continued.

Ans. My occupancy commenced by building a log house on the premises when it was Government land and at the time of what we settlers called the big land sale, which was immediately after opening the office—land office—which had been closed to give the Illinois Central road a chance to select their lands from. I bought three warrants—one of Lewis Clapp, one of John F. Clapp, and one of John S. Crow—of one hundred and sixty acres each. I bought each warrant on one year's time. Warrants were worth then about one dollar an acre—$160. I bought each warrant for two hundred dollars, I think, on one year's time. At the expiration of that time, it being difficult to get money here in Illinois, I had or requested, and in consequence of my embarrassments, those three persons to deed over to Edwin and Jason Clapp—the firm was Jason Clapp & Son; it was Jason Clapp and Edwin Clapp, Pittsfield, Massachusetts—which they did do. I borrowed some money of Edwin and Jason Clapp, and they holding this land as security therefor. They continued to hold this land until the — 1855, when I paid up to Jason and Edwin Clapp my indebtedness to them and requested them to deed the above-mentioned land to Ruggles W. Clapp
570 for the purpose of making a mortgage to one E. W. McLean to secure E. W. McLean for a stock of goods R. W. Clapp had bought of McLean, which I have since learned was since done so. I have continued to occupy these lands, as I have previously stated, and have occupied them from the commencement up to 1868. Soon after these deeds were, as I supposed, sent to R. W. Clapp and the lands deeded to him, Woodbridge (Ruggles W. Clapp) told me that the deeds were not properly certified, or acknowledged, or something of the kind, and that they was not recorded, as I understood it from him, and that he had sent them back to Edwin Clapp to have them corrected. After another period of time he informed me that he had, would, or could make arrangements with E. W. McLean to secure him or satisfy him for this stock of goods, and he then claimed the right to assume and appropriate to his own use the proceeds of this stock of goods, which he did; but along about the year 1866—in the fall, I think it was—Cephas Clapp informed me that my land stood in Woodbridge's name. In the fall and winter of 1867—I think it was 1867—I went to New York. It was 1868, I think, — went to New York. It was 1867, I think, that Cephas informed me, and it was 1868, I think, I went to New York. I can't recollect the dates of late transactions as well as I can of things twenty years ago. I applied to Woodbridge

for a deed. He gave me a deed. He signed it in the
571 city of New York and acknowledged it before a notary public by the name of Nettleton, I believe. From there he accompanied me to Chesterfield, Massachusetts, for the purpose of having his wife sign it and acknowledge it. She did sign it and acknowledge it before one Orsen M. Pearl. From there I started for the West by the way of Pittsfield, Massachusetts. There I called upon Edwin Clapp, told him I had got a deed of my land from Woodbridge, asked him where those deeds from him to Woodbridge were. He said Cephas Clapp had them; he told me to call there and get them. I did call there and received the deeds, and I brought the deeds that evening or afternoon to John V. Eustace. John V. Eustace was then attorney for me in an attachment suit which Ebenezer Lee Clapp had put on the lands against R. W. Clapp for between four and five thousand dollars.

(Excepted to by complainants.)

Inter. 6th. At the time when you state that R. W. Clapp delivered to you a deed for said premises which had been mortgaged to McLean, did he say anything to you—and, if so, what—in reference to said mortgage and the notes secured by it?

(Objected to.)

Ans. He said that I would find a release of mortgage attached to the back part of a ledger he left in Illinois, also the notes that accompanied the mortgage, among a parcel of papers which he
572 had left boxed up in Illinois, and the box he told me he thought I would find among Perry's relatives. Perry had been a clerk for him.

Inter. 7th. Did you ever find said box; if so, when and where?

Ans. I found said box. It was left at Andrus' office in Amboy by one Brigham. I found it soon after I got back from New York.

Inter. 8th. Did you examine said box; and, if so, did you find any papers that had reference to said mortgage; and, if so, what were they?

Ans. Yes, sir; I did. I found certain notes of four or five thousand dollars that corresponded with the description of the notes in the mortgage with the exception of one note, a five-hundred-dollar note, which seemed to be missing.

Inter. 9. Did you find any release of the mortgage?

Ans. I did not.

Inter. 10. Did you ever sell these premises; and, if so, to whom?

Ans. I did; to Lot Chadwick.

Inter. 11. Did said sale cover any other lands than those which had been mortgaged to McLean?

Ans. No, sir.

Inter. 12. What was the consideration paid by Chadwick to you for said conveyance, and how was it paid?

Ans. The consideration was ten thousand dollars. He paid me at the time of making the deed a little over two thousand
573 dollars and was to surrender certain notes which he held

against me, pay up all back taxes, pay something I was owing at the store—about two hundred dollars. The back taxes was between three and four hundred dollars. The amount of the notes which I had become indebted to him before amounted to about six thousand dollars. There was an attachment of Ebenezer Lee Clapp against Woodbridge Clapp which, — the execution and costs, was between eight and ten hundred dollars; I don't recollect now how much. The two thousand dollars consisted part in Lee county bonds and a one-thousand-dollar note against Sherman Shaw.

Inter. 13. What had the attachment that you speak of to do with the consideration for the land?

Ans. The land was advertised; execution issued and the land advertised, & by agreement Mr. Chadwick was to pay it up—this attachment in favor of Ebenezer Clapp.

Inter. 14. Were there any other judgments which, under that agreement, he was to pay?

(Objected to as leading.)

Ans. There was none.

Inter. 15. What portion of the two thousand dollars was paid in Lee county bonds?

Ans. I think there was ten Lee county bonds; I don't recollect. I know there was ten one-hundred-dollar bonds.

574 Inter. 16. Were the notes that you speak of ever surrendered to you; if so, when?

Ans. I think they were surrendered the day the deed was made.

Inter. 17. Were said notes surrendered to you?

Ans. They was.

Inter. 18. At the time R. W. Clapp purchased said stock of goods from McLean where was said stock?

Ans. In a store in Amboy, Lee county, Illinois.

Inter. 19. Who had been running said store at the time of the purchase, and how long had he been running it?

Ans. McLean had been running the store up to the time of the purchase by R. W. Clapp.

Inter. 20. How long thereafter did McLean remain in Amboy?

Ans. McLean remained there, I think, about a week.

Inter. 21. When, where, and how often afterwards did you see McLean?

Ans. I saw him in 1858 or 1859; can't say positively which. I saw him here at the Nachusa House—Nachusa House in Dixon; had some conversation with him; that is the only time that I have seen him.

Inter. 22. Did he in said conversation at the Nachusa House say anything in reference to matters connected with said mortgage; and, if so, what?

Ans. He said nothing about this mortgage. He stated that
575 he had been examining the records with regard to some property—real estate from Woodbridge—and that he found that Woodbridge had been honorable with him, and that he had

acted the gentleman; that is the language—that Woodbridge had been honorable with him and had acted the gentleman.

Inter. 23d. Did he state what property he referred to?

Ans. He referred to some property in Amboy.

Inter. 24. What was the subject-matter of the said conversation?

Ans. It was the final settlement he had with Woodbridge—with R. W. Clapp.

Inter 25. State all that he said in reference thereto.

Ans. He made some other slight remarks against Mr. Ives—Wm. E. Ives; the conversation was cut short by the call for dinner. He invited me to dinner with him.

Inter. 26th. Have you ever had any correspondence with said McLean with reference to said mortgage or to the payment of the debt thereby secured, or has he ever written to you or have you ever received any letter or letters from him in reference thereto?

Ans. I never received any letters from him in reference thereto; and if I have ever written to him—I might have written some letters to him while clerking for Woodbridge—if I done so I did so at his request.

576 Cross-examination:

Cross-interrogatory 1st. When and where did you move to in 1868, and where have you since lived?

Ans. I did not move in 1868.

Cross-inter. 2d. Have you or not lived on the premises described in the McLean mortgage referred to in your answer to the 4th interrogatory since 1868?

Ans. I leased of Mr. Chadwick one of the several houses that is on the premises, ten acres of land, and the privilege of a cow in the pasture on said premises, and at present am still residing there.

Cross-inter. 3d. Have you not lived on said premises since you first occupied them and since 1868?

Ans. Yes; with ten acres of land. I have occupied ten acres of land with the house that I leased.

Cross-inter. 4th. How many houses was there on said premises in 1868?

Ans. Four; I think there was.

Cross-inter. 5th. Was you not in 1868 and have you not since been living in the main or principal farm-house on said farm?

Ans. Since it has been built, the upright part by Mr. Chadwick, it would constitute the main or principal farm-house.

Cross-inter. 6th. Have you not lived in the same house or
577 the house with the improvements made on the same since 1852 or '3, since you first went on the place?

Ans. No, sir.

Cross-inter. 7. Where was the first house you occupied and where is the house you occupy now on said farm?

Ans. The house that I first occupied was a log-house, twenty rods west of the house I occupy now. The house that I occupy now is the house Mr. Chadwick built, now on said premises.

Cross-inter. 8. Is not the house you are now occupying a house built onto a house you were occupying at the time the improvements were made you have been speaking about by Mr. Chadwick?

Ans. The house that I now occupy is the house built by Mr. Chadwick. The building it is attached to is the one occupied by Mr. Chadwick as a grainery.

Cross-inter. 9. Where was you living on said farm at the time or immediately previous to the time the improvements was made by Mr. Chadwick, and was you not living in the addition to the house which you say is now being used by Mr. Chadwick as a grainery?

Ans. I was living in the part which I attached to the old part and occupying the old part, too. Yes, it was the old part.

Cross-inter. 10. When was the new part built?

Ans. The new part was built the year following or the year
578 after I sold to Chadwick. It was built by Mr. Chadwick.

Cross-inter. 11. Was or not the lease you received from Mr. Chadwick in writing, and when and where was the same made?

Ans. I have a lease from Mr. Chadwick in writing. It was made by Esq. Bodine.

Cross-inter. 12. When was it made and where?

Ans. It was made at Esquire Bodine's office. The first lease I had or arrangement was verbal and the second lease was written. I could not give the exact date. It embraces the period, more or less, since 1868.

Cross-inter. 13. State the time, as near as you can, when the written lease was made.

Ans. I think the written lease was made about a year after the sale. The first lease was verbal.

Cross-inter. 14. Where is said lease now, if you know?

Ans. I suppose it to be among my papers.

Cross-inter. 15. When was the deeds made by Jason Clapp and Edwin Clapp to Ruggles W. Clapp, spoken of by you in your answer to the 5th interrogatory?

Ans. In the year 1855, I think.

Cross-inter. 16. Where are said deeds now, if you know, and when did you last see them?

Ans. I don't know where they are now. I last saw them, I think, here in this office. It was about a year ago, I should think.

579 Cross-inter. 17. In whose possession were they at that time?

Ans. J. V. Eustace.

Cross-inter. 18. Was not said John V. Eustace at that time acting as attorney or solicitor for defendant Lot Chadwick in a suit pending in the Lee county circuit court, of Lot Chadwick against Edwin Clapp, in which you was there being examined as a witness?

Ans. I suppose he was. I don't know, but suppose he was, from appearances.

Cross-inter. 19. Was not the goods which were purchased from the complainant, to secure the payment of which the mortgage in question was given, made for your benefit by Ruggles W. Clapp?

Ans. The goods were bought by R. W. Clapp in his name, and I was to receive one-half of the profits arising from the sale thereof.

Cross-inter. 19½. Was not the goods bought and the transactions carried on in the name of Ruggles W. Clapp for your benefit on account of your business embarrassments at that time?

Ans. The goods were bought by R. W. Clapp in his name, for the joint benefit of R. W. Clapp and myself. I was to receive one-half of the profits arising from their sale, for which I had his verbal agreement; we had no written agreement.

Cross-inter. 20. Why was not your name used in the trans-
580 action between said McLean and R. W. Clapp in the purchase of said goods?

Ans. R. W. Clapp first became acquainted with Mr. McLean, and first bargained for the goods before saying anything to me about it.

Cross-inter. 21. If you were to have the benefit of half of the profits, why was not the sale made to you and R. W. jointly?

Ans. I was embarrassed and had confidence in Woodbridge.

Cross-inter. 22. Is it not true, then, that the transaction was carried on in the name of R. W. Clapp or Ruggles W. Clapp for your benefit on account of your business embarrassments?

Ans. On account of my financial embarrassments and the good financial standing of Woodbridge.

Cross-inter. 23rd. Where was you at the time the goods were purchased of McLean and a mortgage made to him to secure the pay for the same?

Ans. I was then farming at that time on these same premises in the town of Bradford.

Cross-inter. 24. Did you at that time have in your possession the deeds from Jason Clapp and Edwin Clapp to R. W. Clapp to a part of the premises described in the mortgage in question? If your answer be yea, state what you did with the same.

Ans. I did not.

Cross-inter. 25. Did you at any time immediately before
581 or after the said transaction have said deeds in your possession or see the same; if so, when and where?

Ans. I never saw the deeds before they were supposed to have been put on record and never have seen them since until I saw them in 1866.

Cross-inter. 26. Where did you see them in 1866?

Ans. I saw them in the hands of Cephas Clapp in 1866 or 1867. It is the only or the first recollection I ever have of having seen them. It is the only recollection I have of having seen them—that time and the other time stated here.

Cross-inter. 27. When and from whom did you obtain the box containing the papers of Ruggles W. Clapp?

Ans. I obtained it from Mr. Brigham, a relative of a certain Mr. Perry. I think it was soon after I got back from New York when I obtained the deed from Woodbridge, R. W.

Cross-inter. 28. What is Mr. Brigham's full name and where does he live?

Ans. I don't know what his full name is. I think he lives west of Amboy; met him in Amboy and enquired for a box of papers which Woodbridge had given me orders to get. He told me he had

such a box of papers and that he would bring them up to Amboy and leave them where I could get them. I told him to leave them at Mr. Andrus' office.

Cross-inter. 29. Where are those notes which you say you found in said box now?

582 Ans. They may be among my papers.

Cross-inter. 30. Have you ever delivered them to any person? If so, when and to whom?

Ans. I don't know whether I ever delivered them. I have shown them to J. V. Eustace, I think.

Cross-inter. 31st. Are they or not now in your possession?

Ans. I don't know. If they are among my papers they are in my possession.

Cross-inter. 32d. Have you or not in your possession other books and papers, which were in said box, belonging to Ruggles W. Clapp?

Ans. I have some papers belonging to Ruggles W. Clapp.

Cross-inter. 33d. Have you all the papers that you found in said box? If not, to whom did you deliver them?

Ans. I have not all the papers that I found in said box. I delivered a good part of them to R. W. Clapp.

Cross-inter. 34th. When was the deed made by you to Chadwick, referred to by you in your direct examination?

Ans. I think it was March, 1868.

Cross-inter. 35. You say that he paid you over two thousand dollars. State the exact amount if you can and in what the payment was made.

Ans. I think the amount that Mr. Chadwick paid me at the time of making the deed to him was two thousand one hundred

583 and fifty dollars. It was something over two thousand; somewhere along there. It consisted in ten Lee county bonds of one hundred dollars each and Sherman Shaw & Co.'s note for a thousand dollars.

Cross-inter. 36. Did he pay you any money at the time of making the deed?

Ans. I don't recollect of his paying any money at that time.

Cross-inter. 37. Can you give the No. of the bonds that you received?

Ans. No, sir; I cannot.

Cross-inter. 38. Where were you at the time he gave you the bonds?

Ans. In Lee Center.

Cross-inter. 39. Whereabouts in Lee Center?

Ans. In Mr. Lot Chadwick's house.

Cross-inter. 40. Was it not at the time of your making the deed to him?

Ans. At the time I made the deed to Lot Chadwick he paid me in the neighborhood of two thousand dollars.

Cross-inter. 41. Who was present at the time of the delivery of the bonds to you?

Ans. Mr. Lot Chadwick and Albert Bodine & Mrs. Clapp, my wife, I think.

Cross-inter. 42. What did you do with said bonds?

Ans. I gave them at that time, or soon after, to my wife to take care of and dispose of for the benefit of myself, wife, and family.

Cross-inter. 43. Where are said bonds now, if you know?

584 Ans. I decline to answer that.

Cross-inter. 44. Were said bonds disposed of by your wife; if so, when, where, and to whom?

Ans. I decline to answer that. I suppose they were disposed of for cash.

Cross-inter. 45. What was the amount of the Sherman Shaw & Co. note, the date, and when & to whom was it payable?

Ans. I don't recollect the date. The amount was a thousand dollars. It was payable to Lot Chadwick. As to when it was payable, I don't recollect. I had an understanding with Mr. Chadwick at the time that when he got in funds that if I would bring the note to him he would cash it.

Cross-inter. 46. Was said note indorsed by said Chadwick at the time you say he delivered it to you?

Ans. I don't think it was indorsed, for there was not the best of feeling between the Shaws & me, and I was a little loth to take the note, and he made that arrangement with me.

Cross-inter. 47. What did you do with said note, if anything, and what became of the same?

Ans. After a short time, I think, I went to Mr. Chadwick and spoke to him, or rather he to me, about if I would bring him that note he would cash it. I think he paid me the face of the note, I know, and the accrued interest on it, I think.

585 Cross-inter. 48. Did you have the note in your possession; if so, how long, and when and where did he pay you the same?

Ans. I had the note in my possession some time, some little time. He paid me the money at his house. I don't recollect the time.

Cross-inter. 49. Was it before or after the note became due he paid you?

Ans. From having this understanding I could not fix the date when it became due. I could not say whether it was before or after it became due.

Cross-inter. 50. Did you ever present or cause to be presented said note to the payees?

Ans. I did not. Mr. Shaw & myself had not been on speaking terms for the last five or six years.

Cross-inter. 51. Where did you keep said note when it was in your possession, and did you ever show the same to any person or persons; if so, to whom and when?

Ans. I kept it in my bureau drawer. I never showed it to any one unless it was my wife.

Cross-inter. 52. Did Mr. Chadwick pay you the full amount of said note or note and interest at one time? If your answer be yea, you will state when and where he paid you & who, if any one, was present.

Ans. Mr. Chadwick paid me one evening when I came down
586 from the farm the full amount—face of the note—& I think some considerable of the interest; but how much I cannot tell. My wife was present.

Cross-inter. 53. Was any one else besides your wife present?

Ans. I don't recollect of any one else being present. There were other members of the family in the house.

Cross-inter. 54. What time in the evening was it?

Ans. I could not say; it was along in the evening. I had to walk back to the farm, so I should judge it was along in the fore part of the evening.

Cross-inter. 55. In what kind of money did he pay you?

Ans. Currency, I think.

Cross-inter. 56. In what room in the house was you when he paid you?

Ans. In Mr. Chadwick's sleeping-room, I think—sleeping-room or sitting-room.

Cross-inter. 57. In what denomination bills and on what bank did he pay you?

Ans. I don't recollect.

Cross-inter. 58. Were the bills separate or in packages, and, if in packages, what size packages?

Ans. It was not in packages, the same as they keep money at the banks; it was in one parcel.

Cross-inter. 59. Was it in a parcel having a strap or paper
587 band around it or were the bills separate?

Ans. I don't recollect.

Cross-inter. 60. State now, as near as you can, the day, month, and year when he paid you this money.

Ans. It was a short time after March, 1869; the time I made the deed to him; the day of the week and the day of the month I could not give.

Cross-inter. 61. State, as near as you can, the time after signing the deed.

Ans. I could not give any exact day or time. It was a short time. Sometimes the time flies faster with me than at others.

Cross-inter. 62. Was it one, two, or three months?

Ans. I could not say. It was not three months, I don't think.

Cross-inter. 63. Where did Mr. Chadwick get the money?

Ans. I don't know.

Cross-inter. 64. Did he have the money with him in the house; if so, where was it he had the same.

Ans. I do not know where he had his money.

Cross-inter. 65. Where did he take it from when you first saw it?

Ans. I think I first saw it in his hands.

Cross-inter. 66. Where was the Sherman Shaw & Co. note when he paid you the money?

Ans. It was in my possession.

588 Cross-inter. 67. Did you have it with you?

Ans. I had brought it down to get it cashed.

Cross-inter. 68. What did you do with the money received from Chadwick?

Ans. I gave it into the hands of my wife after I got back onto the farm to keep and take care of.

Cross-inter. 69. What did she do with it?

Ans. I don't know what she done with it.

Cross-inter. 70. Did she ever give it back to you at any time?

Ans. She always gave me whatever sums I asked for. If I asked for it she gave it to me.

Cross-inter. 71. Do you mean to say that you gave your wife a thousand dollars or more in currency, & you do not know what disposition she made of the same?

Ans. I mean to say that having perfect and implicit confidence in the prudence and good judgment of my wife that I am never afraid to entrust her with any amount of money that comes into my hands.

Cross-inter. 72. Do you know what your wife did with the money or what investment she made or what disposition she made of the same or a large portion thereof? If so, state.

Ans. I do not know of any investment she has made. I do not know. I answered that question before. I felt confidence in
589 her that the money was safe.

Cross-inter. 73. Where did you meet your wife that evening the money was paid to you?

Ans. I don't recollect.

Cross-inter. 74. Did she walk down to Mr. Chadwick's with you, or did you meet her there?

Ans. I can't say she walked down or whether I met her there; she was there, I think; I won't be positive.

Cross-inter. 75. What is the distance from Mr. Chadwick's house to your residence?

Ans. By the traveled road it is four miles; across the fields it is three miles—a short three miles.

At 5 o'clock p. m. examination adjourned until nine o'clock tomorrow morning, Oct'r 17th.

OCTOBER 17TH—nine o'clock a. m.

Cross-inter. 76th. You say in your direct examination that Mr. Chadwick was to surrender up to you certain notes which he held of yours. Will you please state when and where he delivered to you such notes and state the amount of the same?

Ans. The date of his delivering up the notes I could not fix. The aggregate amount was somewhere in the neighborhood of six thousand dollars. I think the time he delivered the notes up was at the time I sold to Mr. Chadwick, in 1867.

590 Cross-inter. 77. Do you mean at the time you made and delivered the deed to the land in question to him at his house?

Ans. I don't mean that he delivered the notes to me at the hour the deed was made, but that it was that day or shortly after.

Cross-inter. 78. How many notes did he deliver to you? And state the amount of each note as near as you can.

Ans. I think there was one note of fifteen hundred dollars; there was one note, I think, of forty dollars. I think there was one note of somewhere about thirty-one hundred dollars. I think there was some others. I could not state the amount; it is past my recollection. The aggregate was about six thousand dollars.

Cross-inter. 79. When and for what consideration did you give Mr. Chadwick the note of fifteen hundred dollars?

Ans. It was for monies I had of Mr. Chadwick. I could not state the year or month. It is more difficult to keep dates in my mind late years.

Cross-inter. 80. Give the date as near as you can.

Ans. The date of the month I cannot give; the year, I think, was 1866 or 1867.

Cross-inter. 81. Was it money paid you at one time?

Ans. It was.

Cross-inter. 82. Where did he pay you the money, and who, if any one, was present?

591 Ans. He paid me the money at his house, in his sleeping-room, where he keeps his valuable papers, & so on. I don't recollect whether there was any members of the family present in that room or not.

Cross-inter. 83. Where is said note now?

Ans. I presume it is among my papers in the town of Bradford, my home, unless I have destroyed it.

Cross-inter. 84. Give the date of the note for thirty-one hundred dollars, and describe the same.

Ans. I don't recollect the date of that note.

Cross-inter. 85. What was the consideration for said note of about thirty-one hundred dollars?

Ans. I don't recolleect whether it was all money and Government bonds or whether part bonds and some money. It was principally money.

Cross-inter. 86. Where did you receive said money from said Chadwick, and who, if any one, was present when you received it?

Ans. I received said money at Mr. Chadwick's house; do not recollect whether any members of Mr. Chadwick's family were in or out of the room at the time of receiving it.

Cross-int. 87. When did you receive it?

Ans. I have stated that I could not give the date of the note. I received it at the time of the date of the note, the respective
592 sums at the date of the note.

Cross-inter. 88. How many notes did you receive from him?

Ans. I don't recollect.

Cross-inter. 89. Give the number as near as you can.

Ans. I think it was four, five, or six that I received.

Cross-inter. 90. Give the amounts of the notes beside the notes of fifteen hundred and thirty-one hundred.

Ans. I could not give the amounts. There was one of forty dollars I have told about. I don't recollect.

Cross-inter. 91. What did you do with the thirty-one hundred dollars in money or part bonds and money you say you received from Mr. Chadwick?

Ans. I gave it into the care of my wife's hands, to be appropriated to the future benefit of myself and wife.

Cross-inter. 92. What disposition did she make of the same?

Ans. I do not know what.

Cross-inter. 93. Where was it that you gave thirty-one hundred dollars to your wife, and who was present?

Ans. At my home. No one was present. I was very particular not to have any one present in such a lonely place, isolated. I did not wish it known that I ever had any large amounts in the house, for prudent reasons as to the safety of it.

593 Cross-inter. 94. What did you do with the fifteen hundred dollars you say you received from Mr. Chadwick?

Ans. I gave it into the hands of my wife.

Cross-inter. 95. When and where did you give it to your wife? State the date as near as you can.

Ans. I gave it to my wife shortly after receiving it at Lee Center. I think it was at Lee Center.

Cross-inter. 96. Where at Lee Center, and who, if any one, was present, and what disposition did she make of it?

Ans. I could not state where in Lee Center; don't know of any one being present. The disposition she made of it I could not tell—could not say.

Cross-inter. 97. You say you saw Mr. McLean at the Nachusa House in Dixon, in 1858 or '59; give the date as near as you can.

Ans. I could not give the date any nearer than that. I think it was one of those two years, 1858 or '59.

Cross-inter. 98. State the season of the year, if you can.

Ans. I think it was in the fall of the year.

Cross-inter. 99. How long was you in conversation with him?

Ans. Only a few minutes.

Cross-inter. 100. Was there any one else present at the conversation?

594 Ans. There was no one present at the conversation; it was in the wash-room.

Cross-inter. 101. Who commenced the conversation and what was said?

Ans. I think Mr. McLean commenced the conversation by remarking that he had come out to examine the records of something. I asked him how he found his matters. He said that in regard to R. W. Clapp he found that he had acted the gentleman with him. That is all I recollect now of the conversation.

Cross-inter. 102. You say that you never had any correspondence with McLean in regard to said mortgage, though you might have written some letters to him while clerking for Woodbridge. When and where was you clerking for Woodbridge?

Ans. In Amboy.

Cross-inter. 103. When?

Ans. I think it was in the winter of 1856.

Cross-inter. 104. What business was he engaged in at that time?

Ans. Speculating in lands and selling dry goods, and trading and trafficking generally. The dry goods he was selling was this stock bought of McLean.

Cross-inter. 105. Do you know one Martin L. Arnold, of Amboy? If your answer be yea, state whether or not you have had any correspondence with him as the agent of said McLean in regard to said mortgage?

Objected to as not cross-examination.

595 Ans. I know Martin L. Arnold; do not recollect of ever having any correspondence with him, written correspondence, on any subject whatever.

Cross-inter. 106. Did you not in the year 1861 to the year 1869 have frequent interviews with him in regard to the settlement of the McLean mortgage?

Objected to as not cross-examination.

Ans. No, sir.

Cross-inter. 107. Did you not during said years have any interviews with him in regard to the settlement of the McLean mortgage?

Objected to as not cross-examination.

Ans. Never had no interview with him in regard to the settlement of the McLean mortgage.

Cross-inter. 108. Did you not in the year 1868 offer to said Arnold certain lands in May township, in the county of Lee, and also certain lands in the county of Whiteside, to be taken by him for said McLean, by deed from Ruggles W. Clapp, in settlement of the McLean mortgage?

Objected to as not cross-examination.

Answer. I never offered Mr. Arnold any lands in May township or in any other township to be taken by him in settlement of the McLean mortgage.

596 Cross-inter. 109. Did you not in the fall of 1867, at Amboy, have an interview with Mr. Arnold in regard to the conveyance of certain lands in May township, and also in Whiteside county, in settlement of the McLean mortgage, and that you expected your brother Woodbridge out, and when he came you would arrange the title to the same?

Objected to as not cross-examination.

Ans. I never had no conversation with Mr. Arnold in regard to the McLean mortgage. Mr. Arnold had a conversation with me—I don't recollect when the time was, in 1867 or 1868—I don't recollect the year—in regard to a certain draft he said belonged to him and was given to McLean by R. W. Clapp; something of that kind

which he had bought of McLean. The draft was amount — one thousand dollars, I think he said. At the same time I think he said that he had made arrangements with Mrs. Clapp, my wife, to let him know when Woodbridge should be West; something of that kind.

Cross-inter. 110. Look at the pencil writing on the back of the letter marked Exhibit "A," attached to your deposition, and state whether or not the same was written by you.

Objected to as not cross-examination, and also objected to for irrelevancy.

(The witness was here shown the paper, hereto attached & marked Exhibit "A.")

597 Ans. The pencil writing was not written by me. I am about half blind. I would not say positively whether it was written by me. That is not my handwriting. It is my impression that it is not my handwriting. It looks more—it looks some as though it might be my wife's handwriting, in pencil.

Cross-inter. 111. Is or not the signature in pencil in said Exhibit A your handwriting?

Ans. I am not prepared to deny. The more I look at it I would not deny it in full, but it might be my handwriting.

Cross-inter. 112. What paper is referred to there as being sent with said letters?

Ans. I don't know.

Cross-inter. 113. Look at the paper marked Exhibit "B," and state whether that is or not the paper referred to in the pencil writing on Exhibit "A."

(The witness was here shown the paper, hereto attached, marked Exhibit "B.")

Ans. I never wrote the letter or sent the paper to Mr. Arnold. The paper marked Exhibit B, I mean.

Cross-inter. 114. What paper did you send with the letter marked Exhibit "A"?

Ans. I have no recollection of ever sending a letter to Mr. Arnold.

Cross-inter. 115. What is your wife's name and what relation is she, if any, to said Lot Chadwick?

598 Ans. Her name is Sarah A. Clapp. She is a daughter of Lot Chadwick.

Cross-inter. 116. When did you marry her and what was her name before her marriage to you?

Ans. I married her in 1866. I believe her name was Sarah A. Chadwich.

Cross-inter. 117. Was not she married before her marriage with you?

Ans. She was.

Cross-inter. 118. To whom was she married?

Ans. To one James Milligan.

Cross-inter. 119. Did you not, when you was examined as a witness in the case of Lot Chadwick against Edwin Clapp, before the

master in chancery of Lee county circuit court, at Dixon, state that Chadwick gave you a thousand-dollar note of Sherman Shaw and Company, and afterwards, on cross-examination, in answer to cross-interrogatory nine, state that you sold it back to Chadwick for principal and interest?

Ans. I don't recollect what I stated then.

Cross-inter. 120. Did you not at the same time of your said examination, in answer to cross-interrogatory 20, when you was asked whether you ever parted with the possession or ownership of the bonds claimed to have been received from Mr. Chadwick as part of the consideration of the farm in question, say, "I did part with the possession of them to raise money, but refuse to state to whom and when"?

Ans. I don't recollect.

599 Cross-inter. 121. Did you not in said examination as a witness on your cross examination also refuse to state what you did with the monies you claimed to have received from Mr. Chadwick?

Ans. I don't recollect that either.

Cross-inter. 122. Did you not refuse to answer before the master in the said examination as a witness the question put to you in regard to the disposition of the notes, bonds, and monies claimed to have been received from Chadwick for the land in question, and was you not on the hearing of said cause called by the court and compelled to answer the same?

Ans. I think I did refuse to answer before the master in chancery. I think I was called by the court and was compelled to answer.

Here the examination of this witness closed.

The witness, after hearing the above testimony read over to him by me, desired to correct some of his answers, as follows:

1st. In his answer to 4th interrogatory to say, "my occupancy of the land in controversy continued to March, 1869, to the time I sold to Chadwick."

2d. In his answer to the 5th interrogatory that "he continued to occupy the land up to 1869."

600 3d. In his answer to the 14th interrogatory to correct as follows: "There was a judgment in favor of Dr. Gardner for about $200; one in favor of Emmerson for, I think, about 248 or 250 dollars, and one in favor of a Mrs. Chase for 125 dollars, all of which Chadwick was to pay."

4th. In his answer to 25th cross-interrogatory as follows: Until 1868, instead of 1866, the time when I received them of Cephas Clapp.

5th. In his answer to 26th cross-interrogatory as follows: The date is 1868; in the beginning of 1868, January or February.

6th. In his answer to 34th cross-interrogatory as follows: March, 1869.

HENRY CLAPP.

Subscribed and sworn to before me this 17th day of October, A. D. 1873.

DWIGHT HEATON, *Examiner.*

EXHIBIT "A" TO THE DEPOSITION OF HENRY CLAPP.

The within exhibit was so badly torn that counsel considered it best to have the same put into an envelope and sealed, which was done by me this third day of December, A. D. 1886.

JAMES F. SANFORD,
Special Examiner.

Examination adjourned to Friday morning, October 24th, 1873, at nine o'clock a. m.

601 FRIDAY, *October 24th*, 1873.

Mrs. HENRY CLAPP, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Interrogatory 1st. What is your name, age, and place of residence?

Answer. My name is Sarah A. Clapp; my age is forty-nine years; residence, Bradford, Lee county, Illinois.

Interrogatory 2d. Do you know the parties to this suit, or either and which of them, and how long have you known them, respectively?

Ans. I have known R. W. Clapp for about four years. I have — Jeremiah Tondrew for about four or five years; Conrad Mealhouse for about three years; John Hinderman for about the same length of time. I am not acquainted with William E. Ives; do not know Edwin W. McLean. Henry Clapp is my husband.

Inter. 3d. Do you know how the consideration money named in the deed made by your husband and yourself to Lot Chadwick for the premises in controversy was paid?

Ans. At the time when the deed was made there were notes due, which notes and interest amounted to over six thousand dollars. At the time when the deed was made there was given one thousand dollars in Lee county bonds and Sherman Shaw's note for one thousand dollars. The bonds, with the note and the interest, amounted to something over two thousand dollars. Then there were ex-

602 ecutions levied upon the land. There was one in favor of E. L. Clapp. I think it amounted to something like eight hundred dollars. There was one which Trusdell had levied on the land. It was in favor of Emmerson and in favor of Henry Clapp. Then there was another one in favor of Mrs. Chase—no; I made a mistake. It was gotten out by Tooker. It was in favor of Mrs. Chase and against Henry Clapp. The one in favor of Emmeron was something like three hundred dollars. I think there was a debt to Dr. Gardner and a debt to Trowbridge. I think Gardner's was something like a hundred and fifty dollars, and Trowbridge's something like three hundred dollars.

Inter. 4. Do you know whether or not there were then any taxes to be paid upon the property?

Objected to as leading.

Ans. There were taxes. I think there was something over three hundred dollars.

Inter. 5. By whom and in favor of whom were the notes made which you say amounted to over six thousand dollars?

Ans. They were made by Henry Clapp and in favor of Lot Chadwick.

Inter. 6. Were you present when the payment for said land was made?

Answer. I was present when the deed was made and the bonds and Sherman Shaw's note was given in payment, and the notes of something over six thousand dollars were delivered at the same time, and these liens upon the land were assumed.

603 Inter. 7th. Can you give any particular description of said notes?

Ans. The first note was dated October 15th, 1866. The amount was fifteen hundred dollars. The second note was in March, 1867, and was for forty dollars. The third one was December 20th, 1867. That, I think, was a little over thirty-one hundred. The 4th was June 1st, 1868. That was something over three hundred. The last note was January 1st, 1869, for something over two hundred dollars.

Inter. 8. At the time of said sale you say these notes were delivered. State by whom delivered and to whom delivered.

Ans. They were delivered by Henry Clapp to Lot Chadwick. Lot Chadwick held the notes against Henry Clapp, and the notes were delivered up to Henry Clapp is what I wish to say.

Inter. 9. Do you know what became of said notes after they were so surrendered?

Ans. They were put among Henry Clapp's papers, and are there yet, I suppose.

Inter. 10. Do you know what became of the Sherman Shaw note?

Ans. It was the understanding when it was taken that it should be bought back, as Mr. Clapp did not desire to hold a note against the Shaws. He did not like them very much.

Inter. 11. Please state, if you know, what disposition was made of said note.

Ans. Henry Clapp held the note a short time, but how
604 long I could not say. He then sold it back to my father—to Lot Chadwick.

Inter. 12. State, if you know, about what time it was so sold back and for what price.

Ans. The deed was made March 1st, 1869. Henry Clapp sold the note back in a short time. I could not say how long; it was only a short time. He sold it back for the face and what interest there was then due.

Inter. 13. Were you ever present at any conversation between Ruggles W. Clapp and Henry Clapp in reference to where the notes given to McLean were? If so, tell when and where said conversation took place and what was said.

Objected to.

Ans. In New York, 1st of January, 1868. Ruggles W. Clapp told Henry Clapp that he would find the McLean notes in his box of papers which were left at Brigham's, below Amboy. He said he would also find a release of mortgage in the back part of his ledger. He had put it in the back part of his ledger.

Inter. 14. How do you know that R. W. Clapp then and there made the statements which you have given in your last answer?

Objected to.

Ans. I was there and heard him.

Inter. 15. Please look at the paper marked Exhibit "A," attached to the deposition of Henry Clapp in this case, and state, if
605 you know, who wrote the lead-pencil note which is written on the last sheet thereof.

Ans. I wrote it.

Inter. 16. Please read it aloud.

Objected to.

Ans. "Mr. Arnold." The long mark before the sixty and the nine and the word paper I did not write.

(The witness ceased reading at the word "Arnold" and made the above statement. Before resuming her reading from the paper marked Exhibit "A" this note is made by the examiner at the request of defendants' counsel.—D. H., examiner.)

Inter. 17. Please read aloud, without any note or comment, the said pencil writing as it now appears upon said exhibit.

Ans. Lee Center, April 2d, 1869. Mr. Arnold, here is the paper and letter which I promised to send to you from Wood. Clapp. Very respectfully, Henry Clapp. I did not make the "&." I don't make it in that way.

Inter. 18. Now, please state whether said pencil writing is in the same condition as when you wrote it; and, if not, state what the difference is.

Ans. When I wrote it it was dated April 2d and nothing more. The year was not put. The 69 are not my figures. This word paper I never wrote. It is not my writing. The "&" I never made. I don't make an "and" that way.

Inter. 19. Is the "and" that you speak of a sign or figure or is it the word written out?

606 Ans. It is a sign or figure. When I wrote the letter I signed my name "Mrs. Henry Clapp," so Mr. Arnold would know. I recollect that distinctly.

Inter. 20. Under what circumstances did you write said note and send said letter?

Ans. I had told Mr. Arnold that I would let him know when Woodbridge Clapp was out here, but I failed to let him know. As near as I can recollect—I don't recollect the body of the letter, but as near as I recollect I sent Mr. Arnold the letter that he might know where he was or when he would come out here.

Inter. 21. Do you know whether the box referred to as having been left at Brigham's was ever obtained from there? Did you ever see it?

Ans. It was obtained. I did see it.

Inter. 22. Do you know whether the said Martin L. Arnold ever had access to said box; if so, when and where was it and what did he do?

Ans. He did. It was in the latter part of the winter or spring of 1869. He came to our house in Bradford as he was on his way to James Phillips, the farm just beyond us. He asked me to let him see the papers, and I done so—the papers belonging to R. W. Clapp; he looked them all over. He looked them all over and took some of them away with him. I don't know what he took, only he took the deed to that Whiteside-county land. I could not say positively about the other papers because he bundled them up together. I saw the Whiteside-county deed.

607 LEWIS CLAPP, a witness on behalf of the defendants, being first duly sworn according to law, testified as follows:

Interrogatory 1st. What is your name, age, occupation, & place of residence?

Answer. Lewis Clapp; age is 63 years; occupation, farmer; residence, Lee Center, Lee county, Illinois.

Interrogatory 2nd. Do you know the parties, plaintiff and defendant, to this suit, or either & which of them, & how long have you known them respectively?

Ans. I know Mr. Chadwick and all the other defendants except Tondrew, Schufelt, Hinderman, and Mealhouse; do not know McLean.

Inter. 3. How long have you lived at Lee Center?

Ans. I came here in 1836; between thirty-six and thirty-seven years.

Inter. 4th. Do you know the premises occupied for many years by Henry Clapp, and by him sold to Lot Chadwick in March, 1869?

Ans. I know the premises Henry Clapp has occupied.

Inter. 5th. What, in your opinion, was their actual cash value on the first day of March, 1869?

Ans. Thirty dollars per acre.

Inter. 6th. Do you think that they could have been sold on that day for all cash at thirty dollars per acre?

608 Ans. Well, that is something that we don't often do. I don't know as I could say whether they could be or not.

Inter. 7th. What way, then, do you think they could have been sold at that price?

Ans. One-quarter down and the balance in notes.

LEWIS CLAPP.

Subscribed and sworn to before me this 24th day of October, A. D. 1873.

DWIGHT HEATON, *Examiner.*

Witness claims fees for one day'- attendance and 12 miles travel.

609 At the residence of Lot Chadwick, in Lee Center, Lee county, Illinois, July 17th, 1883.

ALBERT L. BODINE, a witness produced on behalf of the defendants, being duly sworn according to law, in answer to questions testified as follows, to wit:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Answer. Albert L. Bodine; age, 53 years; occupation, carriage-builder; residence, Lee Center, Lee county, Illinois.

Inter. 2d. Do you know the parties to this suit or either and which of them, and how long have you known them respectively?

Answer. I am acquainted with all the defendants. I have been acquainted with Mr. Chadwick about thirty-five years, Henry Clapp about thirty-three years, Ruggles W. Clapp perhaps about thirty years, William C. Depue about ten years. I am unacquainted with any of the plaintiffs.

Inter. 3d. How long have you lived at Lee Center?

Ans. About 33 years in all.

Inter. 4. Where were you living on the first of March, 1869?

Ans. In Lee Center, Lee county, Illinois.

Inter. 5. Were you or not exercising the duties of any office at that time; &, if so, what office?

610 Ans. I was; that of justice of the peace.

Inter. 6. For how many years have you been a justice of the peace at Lee Center?

Ans. About twenty-five years.

Inter. 7. Please examine a paper now shown you, marked Exhibit "A" to a deposition of Albert Z. Bodine taken before Dwight Heaton, as master in chancery of the Lee county circuit court, on the 22d of February, 1872, and indorsed "filed April 16th, 1872," and constituting a part of the files and records in a chancery case then pending in that court, wherein Lot Chadwick was complainant and Edwin Clapp and others were defendants, and state, if you know, in whose handwriting the body of that instrument is and whether you ever saw it before.

Witness here examined a paper attached to the deposition mentioned in the preceding interrogatory.

Ans. It is in my own handwriting. I have seen it before.

Inter. 8. When and where did you see it first?

Ans. I wrote it at my office on the 1st day of March, 1869.

Inter. 9. Do you know—if so, state—in whose handwriting are the signatures thereto?

Ans. In the handwriting of those whom it purports to be—Henry Clapp and Sarah A. Clapp, his wife.

Inter. 10. State whether or not you were present at the execution of that instrument.

611 Ans. I was present.

Inter. 11. When and where was it executed, and who besides you were present?

Ans. It was executed at this house, in this room, I think, near where we are. The parties to the deed were present. There may have others casually come into the room at the time.

Inter. 12. State whether or not Fletcher D. Clapp, son of said Henry Clapp, was present at that time.

Ans. I think he was not.

Inter. 13. State what, if anything, you then saw done by the parties to said deed with reference to the payment of the consideration money therefor.

Ans. I saw money paid—bonds, notes, and receipts paid as consideration.

Inter. 14. Describe the manner in which it was done as well as you can.

Ans. I saw Mr. Chadwick, the grantor herein, tender to Henry Clapp money, bonds, notes, and receipts, I think, and they were taken by him as payment for the land.

Inter. 15. State what kind of bonds and the number and the denominations thereof, if you can.

Ans. My impression was that they were United States bonds. I could not state the denomination.

Inter. 16. What, if you remember, was the amount of bonds?

Ans. I don't recollect the amount now.

612 Inter. 17. State whether or not this deed was acknowledged by any person; if so, by whom and before whom.

Ans. It was acknowledged by the grantors, before me.

Inter. 18. How recently have you seen the defendant Ruggles W. Clapp?

Ans. Within three months, I think.

Inter. 19. Where did you then see him?

Ans. Here in town.

Inter. 20. State whether or not at that time he said anything to you about his connection with this case.

(Objected to.)

Ans. He said he could throw the case either way with his testimony.

(Objected to as not responsive.)

Inter. 21. If he said anything to you on the occasion referred to concerning his connection with or testimony in this case state as fully as you can that conversation.

(Objected to.)

Ans. Really I don't recollect all of it. He wanted to submit a proposition to Mr. Chadwick, that if Mr. Chadwick would give the opposite party two thousand dollars the case would be dropped. He wished me to submit that proposition. I declined, because I thought it would not be listened to. That is all that I think of just now.

613 Inter. 22. State whether or not he said anything concerning his testimony; if so, what he said and in what connection he said it.

(Objected to.)

Ans. He said he could throw the case either way by his testimony, and he rather advised that Mr. Chadwick settle it by paying two thousand dollars.

(Objected to as not responsive.)

Inter 23. State whether or not at the time this deed was executed you saw any wine there present or drank by anybody, and if you know whether or not Henry Clapp at that time was under the influence of liquor.

(Objected to.)

Ans. There was no wine present that I saw. Henry Clapp was not under the influence of liquor at that time, so far as I could see.

Cross-examination:

Cross-inter. 1st. Your deposition is being taken at the residence of defendant Chadwick is it not?

Ans. Yes, sir.

Cross-inter. 2. Do you distinctly remember all that occurred in your presence in reference to this deed on the day that it was executed?

Ans. No, sir; I do not.

Cross-inter. 3d. Are you sure that you correctly remember anything that transpired that day in your presence in relation thereto?

614 Ans. I am.

Cross-inter. 4. What is it you are sure you thus remember?

Ans. I am sure that I wrote the deed, I am sure I brought it over here, and I am sure that the grantors signed it and acknowledged it, and I am sure there was a consideration paid.

Cross-inter. 5. Are you sure that you remember correctly anything else in that connection that transpired in your presence that day?

Ans. Nothing particular.

Cross-inter. 6. At whose request did you draw the deed?

Ans. I think at the request of both parties; it is my impression now.

Cross-inter. 7. What did they or either of them say to you on the subject?

Ans. I don't remember the precise conversation, but they brought a description for me to make out a deed by from Henry Clapp and wife to Lot Chadwick.

Cross-inter. 8. Did they then tell you what their bargain was?

Ans. They told me that the consideration would be ten thousand dollars.

Cross-inter. 9. Did they tell you how it was to be paid?

Ans. They did not.

Cross-inter. 10. Did you do any figuring for them in the matter?

Ans. I did not.

615 Cross-inter. 11. At any time that day?

(Objected to as not cross-examination.)

Ans. I did not.

Cross-inter. 12. What time in the day was the deed drawn and at what time executed?

Ans. My impression is that it was drawn in the forenoon and executed in the afternoon, right away after dinner.

Cross-inter. 13. Are you sure that you can remember correctly who were present at its execution?

Ans. I think I can.

Cross-inter. 14. How long were you in the house at the time?

Ans. Fifteen or twenty minutes.

Cross-inter. 15. What reason had you for taking note of everybody that chanced to come in or go out during your stay?

(Objected to because that it assumes what has not been testified to.)

Ans. The reason was because I knew it was private business.

Cross-inter. 16. How did you know that?

Ans. Because in all the business I have ever done for Mr. Chadwick he has been very careful to have it private.

Cross-inter. 17. Were the doors of the room fastened so that others could not come in?

616 Ans. I could not tell you, sir.

Cross-inter. 18. Do you know whether other persons were in the house?

Ans. Yes, sir; there were others in the house.

Cross-inter. 19. May not some of them have come into the room and you not now remember it?

Ans. It is possible that they might.

Cross-inter. 20. Do you know how much in bonds, notes, money, and receipts Mr. Chadwick passed over to Henry at that time?

Ans. My recollection is about eight thousand dollars.

Cross-inter. 21. Do you feel sure of that?

Ans. Yes, sir.

Cross-inter. 22. How much in receipts?

Ans. I could not state how much; but he had paid money, I think, for Henry Clapp upon divers occasions.

Cross-inter. 23. Can't you state how much he thus paid as shown by these receipts?

Ans. I could not with any certainty.

Cross-inter. 24. Did you add it up?

Ans. I looked over the papers and money, bonds, notes, and receipts, and made an estimate of it at the time; could not say how much of each. I recollect an item of two thousand dollars in money. I recollect a note against Sherman Shaw, Son & Co. of one thousand dollars and interest.

Cross-inter. 25. How much was there in bonds?

Ans. My impression is there was three thousand dol-

617 lars.

Cross-inter. 26. Did you compute the interest on these bonds?

Ans. I did not.

Cross-inter. 27. Or on the note referred to?

Ans. I did not; simply looked it over and saw it was drawing ten per cent. interest.

Cross-inter. 28. Did you compute the interest on any other notes, if there were any?

Ans. I did not.

Cross-inter. 29. How, then, could you tell the aggregate?

Ans. Simply from the face of the papers or obligations.

Cross-inter. 30. Do you mean that the money and face of the notes and receipts amounted to eight thousand dollars?

Ans. Yes, sir.

Cross-inter. 31. Without accumulated interest add-?

Ans. Yes, sir.

Redirect examination:

Inter. 1st. Are you certain whether your recollection of there having been a payment of two thousand dollars in money and three thousand dollars additional in bonds is correct, or may the money or bond payment altogether — amounted to one or the other of those sums, or, with the Sherman Shaw & Son & Co. note, have amounted to one or the other of the sums you have named?

618 (Objected to as leading and otherwise incompetent.)

Ans. I think I have a distinct recollection of the two thousand dollars in money and of the note; but I am not so positive as to the amount of the bonds; there may have been a less amount of bonds.

Inter. 2. You state that you knew that this was private business, and that in all business you had done for Mr. Chadwick he had been very careful to have it private. Please state whether or not you had ever before this occasion done business for him.

(Objected to.)

Ans. I think I had.

Inter. 3. On about how many occasions do you think had you?

(Objected to.)

Ans. I don't remember how many, but on several occasions in different ways.

Inter. 4. State whether or not within a year before that you had participated in the transaction of any business between him and other persons in which money or bonds were paid by him to such others.

(Objected to.)

Ans. I don't recollect any transactions now within a year of that time.

Inter. 5. Do you remember of transactions in which money or bonds were paid by him to a person named Werter and another person named Skinner?

(Objected to.)

619 Ans. I have such a recollection; yes, sir.

Inter. 6. Do you have any recollection when they occurred?

Ans. My recollection is that they occurred previous to the making of this deed in question.

Inter. 7. Could you say how long previous to it?

Ans. I could not say, but the presumption is it was within three years previous.

ALBERT L. BODINE.

Subscribed and sworn to before me this 17th day of July, 1883.

DWIGHT HEATON, *Examiner.*

Witness claims fees for one day's attendance, one mile travel.

620 JULY 31ST, 1883.

At the residence of Lot Chadwick, at Lee Center, Lee county, Illinois.

Counsel for defendants recalls the witness HENRY CLAPP for the purpose of further examination concerning matters that have become material since his former examination.

To which counsel for complainants objects.

The witness was here sworn as a witness in the cause, with its present title.

Interrogatory 1st. Did you see some two weeks ago, at this place, a paper produced by Mr. Bardwell, complainants' counsel, which purported to be the answer of Ruggles Woodbridge Clapp to the original bill in this case?

Ans. I believe I did.

Inter. 2d. After the original suit of Edwin W. McLean against Lot Chadwick and others, and of which this case is a continuation, had been commenced, did you receive any letter from Ruggles Woodbridge Clapp concerning his answer in that case?

(Objected to.)

Ans. I did.

Inter. 3d. Please examine the letter and envelope now shown you and state whether you ever saw them before; if so, when for the first time, as nearly as you can.

(Objected to.)

621 Ans. (The witness was here handed by def'ts' counsel two papers.) That is the letter and this is the envelope that I received some time in 1872 from Ruggles W. Clapp.

Inter. 4. State how you received it.

(Objected to.)

Ans. I received it by mail.

Inter. 5. State, if you know, in whose handwriting it is written.

(Objected to.)

Ans. The letter is written in the handwriting of R. W. Clapp. There is so much on the envelop. The words Lee Center and Lee county is in the handwriting of R. W. Clapp.

Inter. 6. Do you know whether the lead-pencil writing on the envelope was there when received by you?

(Objected to.)

Ans. It was not.

The examiner is here requested to mark the letter and envelop as exhibits, that they may be identified and attached to this deposition.

The examiner here marked said letter & envelop Exhibits "D" & "E," respectively, and which are attached to this deposition.

(Objected to as immaterial and incompetent.)

Inter. 7. State whether or not at any time after the original bill in this case was filed Ruggles Woodbridge Clapp had any conversation with you concerning the McLean notes and his testi-
622 mony in this case. If so, state when and where it occurred and what was said.

(Objected to.)

Ans. He did have a conversation with me, saying that if Mr. Chadwick would give him two thousand dollars he would make the case go or he would testify for him; otherwise he would make new notes and swamp him, or something to that effect. The place was at Mr. Chadwick's farm-house on the farm in Bradford. It was after this McLean suit was commenced, I think. It was some time in 1872. It was after I sold to Mr. Chadwick.

Inter. 8. Have you related all you can remember that was said upon the subject of the McLean notes and his testimony? If not or if you remember any more, please state it.

(Objected to.)

Ans. I don't remember anything more on the subject.

Inter. 9. Please state whether or not any other person was present at that conversation.

Ans. I think there was. I think Mr. Charles Chadwick was present.

Inter. 10. Please state whether or not you have been at any time or by any person other than yourself in any manner restrained from visiting, meeting, or associating with any of your relations.

Ans. Never, never, never.

Inter. 11. If you have abstained from visiting or associat-
623 ing with some or any of them state whether or not it has been of your own volition and choice.

(Objected to.)

Ans. Entirely so.

Inter. 12. What is the present state of your health?

Ans. All I can say — to my health, I have a heart affection and

(Objected to.)

619 Ans. I have such a recollection; yes, sir.

Inter. 6. Do you have any recollection when they occurred?

Ans. My recollection is that they occurred previous to the making of this deed in question.

Inter. 7. Could you say how long previous to it?

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Inter. 8. Have you related all you can remember that was said upon the subject of the McLean notes and his testimony? If not or if you remember any more, please state it.

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Ans. I don't remember anything more on the subject.

Inter. 9. Please state whether or not any other person was present at that conversation.

Ans. I think there was. I think Mr. Charles Chadwick was present.

Inter. 10. Please state whether or not you have been at any time or by any person other than yourself in any manner restrained from visiting, meeting, or associating with any of your relations.

Ans. Never, never, never.

Inter. 11. If you have abstained from visiting or associat-
623 ing with some or any of them state whether or not it has been of your own volition and choice.

(Objected to.)

Ans. Entirely so.

Inter. 12. What is the present state of your health?

Ans. All I can say — to my health, I have a heart affection and

dropsy two years ago; it commenced then. I am not fully recovered from it now; my mother died of the dropsy.

Inter. 13. State whether or not your son, Fletcher D. Clapp, was present on the 1st of March, 1869, at the residence of Lot Chadwick, when the deed was made by yourself and wife to Lot Chadwick.

Ans. He was not; he was four miles away.

Inter. 14. Was he present during any part of that transaction?

Ans. He was not.

Inter. 15. State whether or not on the morning of the day that deed was made at Mr. Chadwick's house in the presence of Fletcher D. Clapp or at any other time or place you wanted to borrow of Mr. Chadwick money to pay the E. L. Clapp judgment and mortgage the coming crops, and Mr. Chadwick said he would not let you have the money unless you would put the place in his name, and you said you wanted to keep your own property in your own name, as it had always been until last year in some one else; that the crops would be perfect security; that surely your thirds
624 would be worth fifteen hundred dollars, but Mr. Chadwick said he would not advance the money unless you would deed the entire property to him, and whether you then said you would go down and see Cephas Clapp and he would let you have the money. State whether any such conversation, in substance or effect, ever took place.

Ans. None whatever.

Inter. 16. State whether your wife then told you to hold on and she would send for some wine, and that after you drank that you would not feel so nervous, or anything to that effect.

Ans. Nothing whatever.

Inter. 17. Was any wine brought there and drank by you?

Ans. Never; wine or any other alcoholic drink. I never drank anything on Mr. Chadwick's premises here in Lee Center.

Inter. 18. State whether or not after the deed was drawn and executed at Mr. Chadwick's house on that day in the presence of Fletcher D. Clapp or at any other time or place you told Mr. Chadwick that when this matter was straightened up he was to deed your wife one hundred acres of land, and did she say she did not ask but for forty, and did you say she was a trump and should have a hundred, and did she ask how much that would be worth, and did you say it would be worth four thousand dollars. Did any such conversation,
625 in substance or effect, then or at any time take place?

Ans. None whatever.

Inter. 19. Did you then or at any time tell Mr. Chadwick you wanted him to do that and when you got matters all settled up you wanted the balance back, or anything like that?

Ans. No, sir; never.

Inter. 20. Did Mr. Chadwick then or at any time, in the presence of Fletcher Clapp or otherwise, at Chadwick's residence or elsewhere, ever say to you, "I will take this, Mr. Clapp, and shall do what is right with you when I get matters straightened up, and did you say to him that you wanted him to take entire charge of the money that came from the crops and do as Cephas Clapp had been doing for

years and you would pay him three dollars a day for what time he put in — looking after matters?

Ans. No such conversation ever took place between Mr. Chadwick and myself whatever.

Inter. 21. State whether or not on the day that deed was made and executed and after Mr. Bodine had gone away the bonds or any part of the consideration that had been paid you by Mr. Chadwick on that occasion were returned to or were taken back by him.

Ans. There was nothing of the kind taken back by Mr. Chadwick, but I had a note against Mr. Shaw that he might have cashed for me. I don't recollect.

626 Inter. 22. State whether or not on that occasion or at any time, in the presence of Fletcher D. Clapp or otherwise, Mr. Chadwick said to you, I will keep a straight account of every dollar I receive from the place, and Mr. Clapp shall charge you for what monies I pay out for you, and shall charge you interest, and shall charge one dollar and a half for every day that I put in — attending to this business, or anything in substance or effect like that.

Ans. Nothing of the kind whatever; no such conversation in the presence of Fletcher Clapp or any one else.

Inter. 23. State whether or not an interview ever occurred at the residence of Lot Chadwick between yourself and Martin L. Arnold.

Ans. There was such an interview during the E. L. Clapp attachment suit.

Inter. 24. Who were present at that interview?

Ans. There was Mrs. Clapp, my wife, and Mr. Chadwick. Mrs. Chadwick might; I could not say whether she was present or not.

Inter. 25. Was Fletcher D. Clapp present?

Ans. He was not.

Inter. 26. Can you fix the time when that interview occurred?

Ans. I can fix the day, but don't know as I can fix the year. It was during the E. L. Clapp attachment suit.

Inter. 27. What day was it?

Ans. Sunday. Sunday morning.

627 Inter. 28. By the E. L. Clapp attachment suit do you or not refer to the attachment suit prosecuted in the Lee county circuit court in the name of Ebenezer Lee Clapp against Ruggles Woodbridge Clapp, in which suit some or all of the bonds described in the McLean mortgage were levied upon?

Ans. I do.

Inter. 29. State, if you can, whether this interview with Arnold occurred before or after that suit was tried.

Ans. Before.

Inter. 30. Can you tell how long before?

Ans. I could not say how long before.

Inter. 31. Do you know—if so, state—how it happened that Arnold came to Mr. Chadwick's on that occasion?

Ans. He came at the solicitation of myself, or my wife speaking to him.

Inter. 32. State whether or not at that interview at Mr. Chadwick's

Arnold produced any papers. If so, what paper or papers did he produce?

Ans. He produced what purported to be an abstract of the land up in the town of Bradford that R. W. Clapp deeded to me. The section and numbers of the land I could not give you.

Inter. 33. Did he exhibit on that occasion any other papers?

Ans. None whatever, as I now recollect.

628 Inter. 34. Relate what you can remember of any conversation that there took place in the presence of Arnold or with him.

(Objected to.)

Ans. I cannot give the conversation. I have testified on that case and dismissed it from my mind—those events. I think that Arnold did say something about a draft that he bought of Woodbridge Clapp, but I don't recollect.

Inter. 35. State whether anything was said or done at that interview with or concerning the abstract you speak of. If so, what?

Ans. I think that Mrs. Clapp copied that abstract.

Inter. 36. Do you remember, and, if so, state, whether Mr. Chadwick participated in that interview?

Ans. Being on Sunday, it is not like Mr. Chadwick to participate in any business interview. No, sir; I don't think he did; I could not say positively.

Inter. 37. Were any papers other than the abstract produced or exhibited by Arnold at that interview?

Ans. Not as I now recollect.

Inter. 38. State whether or not during that interview Mr. Chadwick took papers—legal papers—produced by Arnold and examined them all very carefully, and was asked by you what the difference would be as you had the notes, but the mortgage was still on; to which Mr. Chadwick replied that if those notes were fraudu-

629 lently got up it would make no difference; the mortgage would hold the land.

Ans. There was no such conversation in my hearing, and I was in the room all the while.

Inter. 39. State whether or not you there asked Mr. Chadwick if he did not think by Arnold's talk that it could be settled without going into law about it, and whether Mr. Chadwick said his advice would be to settle the matter as quick as you could; that he always avoided going to law when a man was willing to settle for what was right, and by Mr. Arnold's talk he seemed to do what was fair; or was anything in substance or effect said like that while Arnold was there or after he left by you and Mr. Chadwick on that occasion?

Ans. Nothing whatever.

Inter. 40. State whether or not Arnold was asked by any one to leave that abstract. If so, by whom?

Ans. I don't know whether any one asked him to leave it. My wife took a copy of it.

Inter. 41. State whether or not Mr. Chadwick asked him to leave it, as he wanted to use it in some suit.

Ans. He did not.

Inter. 42. State whether or not you ever had a conversation with Martin L. Arnold in a saloon opposite the passenger-house in Amboy—in the rear room of a basement saloon?

Ans. Never.

630 Inter. 43. Did you ever have a conversation with him concerning the McLean mortgage, in which you asked what was the very least he would take and compromise it, and in which you said you had been to Dixon, but had got away from them and come down there and wanted to see him?

Ans. Never.

Inter. 44. Did any such conversation in substance or effect ever take place between you and him in the rear room of a basement saloon opposite the passenger-house, in Amboy?

Ans. Never.

Inter. 45. Did you ever have a conversation with said Arnold at the stable on the farm after you had conveyed the land to Mr. Chadwick in which you said to Arnold that you were forced into the hands of Chadwick by your brother Lee Clapp; that he had a judgment against you; that Chadwick had let you have the money to settle it or had paid it or settled it, and in which conversation Arnold asked you how much Chadwick let you have, and you told him the amount of the Lee Clapp judgment, cemetery lot, store bills, and other matters amounting to between ten and eleven hundred dollars?

Ans. Never had no such conversation with Mr. Arnold.

Inter. 46. Did Arnold at the stable on that farm ask you if that, referring to the matters mentioned in the last preceding

631 interrogatory, was all you owed Chadwick, and did you say it was, and you wished you knew where you could get the money and pay him and get out of his clutches?

Ans. No, sir.

Inter. 47. Did Arnold there tell you to go down to Cephas Clapp; that if he had not got the money by him he would get it for you to help you out of the scrape, and did you say you would do so?

Ans. No, sir.

Inter. 48. Did any conversation in substance or effect like that contained in the last three preceding interrogatories ever take place between you and Arnold, either at the stable on the farm in Bradford or elsewhere?

Ans. It did not.

Inter. 49. Did you ever have a conversation with Arnold in a saloon opposite the passenger-house, in Amboy, in which you said to him you wanted to know the least he would take to compromise the matter; to which he said he wanted one hundred cents on the dollar, then; to which you replied, But you offered to take less once? to which he said, That was before I had been to the expense and trouble of commencing suit; and said, I heard you had been shot in the foot—how did that happen? to which you replied, It's none of your d—n

business; and said you did not allow anybody to interfere in any of your family matters, and then asked him how much he got
632 out of this foreclosure in case he won; to which he said, It is none of your business?

Ans. No, sir; never had any conversation of anything of the kind.

Inter. 50. Was Arnold at your residence, on the farm in Bradford, at any time after you had sold the farm to Mr. Chadwick?

Ans. I don't recollect that he ever was.

Inter. 51. Was he there at any time when he examined any papers that were in a box or trunk belonging to R. W. Clapp?

Ans. There was a time that he took some papers out of a box; what he took I don't now recollect.

Inter. 52. For what purpose, if you know, was he there on that occasion?

Ans. I think he said he wanted to find out where Woodbridge Clapp was or something of that kind.

Inter. 53. State whether or not at any time while living on that farm in Bradford, after you had sold it to Mr. Chadwick, conversation or conversations took place between yourself and wife in the presence of Fletcher D. Clapp, in which it was said that Mr. Ephraim Whitney would be a good man to send to Arnold to compromise, and did your wife request Whitney to come over to the house, and did he come, and did you or she tell him to offer Arnold one thousand dollars and, if need be, two thousand dollars,
633 and that you would give him one hundred dollars for his trouble, and did you say that you would rather pay five thousand and get the matter settled up?

Ans. Nothing of the kind whatever in his presence or out of his presence, such conversation as that.

Inter. 54. Did any conversation take place between yourself and wife in the presence of Fletcher D. Clapp about getting Charles Chadwick to come up from Missouri and take the place?

Ans. No, sir.

Inter. 55. State whether or not while you were living at Red Oak, Iowa, your wife came back home after money from her father, Mr. Chadwick, and returned with money, and said that her father told her that that must last for the family until after harvest, as he had used up all of the last year's crops and would have to take some of his own money if he used that up before harvest.

Ans. Never was no such conversation; my wife came home to visit her folks some time during her residence there; she never brought any money to me from her father.

Cross-examination:

Cross-interrogatory 1st. When did you move off the farm you say you sold Chadwick and to what place did you move?

Ans. I moved out to Western Nebraska and Kansas; I
634 could not give the date when I moved off the farm; I think it might be in 1873 or '4.

Cross-inter. 2d. Give the names of the different places you lived

in in Nebraska and Kansas and the length of your residence at each place.

(Objected to as immaterial and not proper cross-examination.)

Ans. I could not give the names; it was mostly up and down creeks. I could give the names of creeks.

Cross-inter. 3. Give the several post-office addresses you had while there.

Ans. I could not give you that.

Cross-inter. 4. How long were you in Western Nebraska?

Ans. I could not tell you.

Cross-inter. 6. What was your business while there?

(Objected to.)

Ans. Looking up a site for homestead; homesteading; taking advantage of the land laws.

Cross-inter. 7. Did you invest or take up a homestead there?

(Objected to as immaterial and not cross-examination.)

Ans. I did not.

Cross-inter. 8. At what place, if any, did you settle after leaving Western Nebraska and Kansas?

Ans. I came east; went into Western Iowa.

Cross-inter. 9. At what point did you settle there?

635 Ans. We stopped at Red Oak awhile.

Cross-inter. 10. How long?

Ans. I could not tell you.

Cross-inter. 11. Did you or your wife go into any business there; if so, what?

(Objected to as immaterial and not proper cross-examination.)

Ans. I had no business there, except to look over the lands, railroad land and etc., to see what there was there. I went into no business.

Cross-inter. 12. Did you make any purchases or investments in that section?

(Same objection as to cross-inter. 11.)

Ans. I did not.

Cross-inter. 13. State at what point you first settled after leaving Western Kansas and Nebraska.

Ans. Beaver Creek; I think in Nebraska.

Cross-inter. 14. I say after leaving Nebraska.

Ans. Sappy Creek, in Kansas.

Cross-inter. 15. What I wish to know is at what point, after leaving Kansas and Nebraska, did you first settle so as to consider it your home?

Ans. Red Oak.

Cross-inter. 16. How long did you live there?

(Objected to as having already been asked and answered.)

Ans. I could not tell you.

636 Cross-inter. 17. To what point did you move from Red Oak?

Ans. Chicago.

Cross-inter. 18. How long did you live in Chicago and what was your business while there?

Ans. I could not tell you how long I lived in Chicago. I wanted to get posted up as to what were the chances for speculation—investment of money.

Cross-inter. 19. What was your address while there?

Ans. I could not tell you.

Cross-inter. 20. Was your wife with you?

Ans. She was.

Cross-inter. 21. How much money had you to invest and whose was it?

(Objected to as immaterial & not proper cross-examination.)

Ans. The money was mine. The amount I had I decline to tell to anybody.

Cross-inter. 22. In what shape was this money and where deposited, if at all?

Ans. That is prying into my private business. I shan't tell. I don't think it would be prudent for my business for me to tell.

Cross-inter. 23. Will you not tell me about the amount?

Ans. No, sir.

Cross-inter. 24. Did you invest any in Chicago?

(Objected to as immaterial and not proper cross-examination.)

Ans. Only in expenses.

637 Cross-inter. 25. Will you tell me from what source you obtained any of the money you were seeking an investment for?

Ans. I obtained it from the sale of the farm in Bradford.

Cross-inter. 26. How much of what you were seeking to invest did you obtain from that source?

Ans. All that I had.

Cross-inter. 27. Can you tell me the name of any person in Chicago with whom you conversed as to investments?

Ans. I don't know as I could. I got my information mostly from the papers. It did not do to talk to people there about investments among the common rabble.

Cross-inter. 28. From the time you say you sold the farm did you not pay for your living and family expenses out of the amount then paid you by Mr. Chadwick, including traveling expenses?

Ans. I paid out of my own funds that I had received for the farm.

Cross-inter. 29. When you sold to Mr. Chadwick had you any property or funds other than the proceeds of the sale?

Objected to as not proper cross-examination, the witness not having been asked on this examination anything about what other funds he had at the time of said sale and having been fully cross-

examined on his former examination as to the disposition he
638 made of the money previously borrowed by him of Lot Chadwick and as to his pecuniary circumstances that time.

Ans. I had the proceeds of the sale of the farm. I think I had no other property or funds other than the proceeds of the sale. I don't recollect.

Cross-inter. 30. To what place did you move from Chicago?

Ans. Mendota.

Cross-inter. 31. How long did you live there and what was your business?

Ans. I don't recollect how long I lived there. I was in no business there.

Cross-inter. 32. To what point did you move from Mendota?

Ans. Rock Island.

Cross-inter. 33. How long did you remain there and what was your business while there?

Ans. I could not tell you how long I remained there. I was in no business there.

Cross-inter. 34. To what point did you move from Rock Island?

Ans. Davenport, Iowa.

Cross-inter. 35. State from that on the places at which you lived before returning to Lee Centre.

Ans. I lived at Monmouth; was sick there a long time; at Mendota; then to Lee Center.

Cross-inter. 36. Did you engage in business or make any investments in any of these places?

639 Ans. No, sir.

Cross-inter. 37. Have you any other letters from Ruggles W. Clapp than the one produced and attached to your deposition?

Ans. I don't recollect.

Cross-inter. 38. What physician, if any, has attended you in your sickness since your return to Lee Center?

Ans. Dr. Loomis has been called for me three or four times, I think.

Cross-inter. 39. You were in the habit some years ago of drinking liquor to excess, were you not?

Ans. Only for a short time.

Cross-inter. 40. What do you mean by that?

Ans. I mean three or four or five or six months.

Cross-inter. 41. Do you mean that only once covering about that length of time you drank to excess?

Ans. Yes, sir.

Cross-inter. 42. What year was it?

Ans. I could not give you the year; it was not within the last ten years.

Cross-inter. 43. Was it in 1868?

Ans. I could not tell you; it was not in 1868—that six months of drinking.

Cross-inter. 44. What year was it, then?

Ans. I think it was the year after I sold out to Mr. Chadwick.

I think it — the first or second year following; after I sold
640 out to Mr. Chadwick.

Cross-inter. 45. When was your attention first called to the question as to Fletcher Clapp's presence at any of the times referred to in your direct examination?

Ans. I don't recollect.

Cross-inter. 46. Where did you leave him on the Sunday morning you say the interview with Arnold took place?

Ans. The Sunday morning that Arnold was here we had been spending the week or part of the week at Dixon. We came home by the way of Amboy. We left Fletcher on the farm when we went to Dixon.

Cross-inter. 47. How did you reach Lee Center from Amboy?

Ans. I don't recollect how we reached Lee Center. I think it was with the team that carried us to Dixon.

Cross-inter. 48. Who drove the team?

Ans. I don't recollect.

Cross-inter. 49. Who drove you to Dixon, and what was your business there?

Ans. I think it was John Kessler. I don't recollect the business. I think it was something about the E. L. Clapp attachment suit. I don't recollect.

Cross-inter. 50. Who did you leave on the farm with Fletcher, if any one?

Ans. I don't recollect.

Cross-inter. 51. When you and your wife left home on any occasion did you ever leave Fletcher at Mr. Chadwick's house?

641 Ans. I don't recollect of ever leaving him there. His stepmother had charge of him.

Cross-inter. 52. Did you at any time ask Mr. Chadwick to loan you the money necessary to pay off the Lee Clapp claim?

Ans. No, sir.

Cross-inter. 53. Do you pretend to remember now all the transactions and conversations you have had with different persons relating to the matters involved in this suit?

(Objected to as too broad.)

Ans. Not wholly.

Cross-inter. 54. Do you deny having any conversation whatever with Arnold in relation to the McLean mortgage?

Ans. I do.

Cross-inter. 55. Do you now swear that at the interview at Mr. Chadwick's, in Arnold's presence, to which reference has been made, the McLean mortgage was not mentioned or referred to?

Ans. I do, as I now recollect.

Cross-inter. 56. If Mr. Chadwick swore, on the trial of the Edwin Clapp case, he, referring to Arnold, brought, as I understood him, an abstract of title to the lands included in the McLean mortgage—I think the conversation afterwards related entirely to that subject—was he, Mr. Chadwick, right or wrong in so swearing?

(Objected to as improper cross-examination.)

642 Ans. I don't recollect anything; that is a good many years ago.

Cross-inter. 57. Where was Fletcher Clapp the day you signed the deed to Mr. Chadwick?

Ans. I think he was upon the farm; four miles away.

Cross-inter. 58. Who was there with him?

Ans. I don't recollect who was there with him.

Cross-inter. 59. What time did you come to Lee Center that day, and how did you come?

Ans. The time that we came I don't recollect. We came afoot across the fields, I think.

Cross-inter. 60. Do you remember that distinctly?

Ans. I could not say; that is my impression. We came across the fields afoot; I don't remember it distinctly.

Cross-inter. 61. Do you pretend to remember at what times Fletcher came with you to Mr. Chadwick's and what times he did not so long ago as 1868 and 1869?

Ans. With me — I pretend to remember; he never came with me to Mr. Chadwick's alone.

Cross-inter. 62. Are you sure of that?

Ans. My answer is I have no recollection of his ever coming with me alone.

Cross-inter. 63. Who, if any one, was in your family in
643 1868 & 1869 besides yourself, wife, and Fletcher?

Ans. I don't recollect of any one.

Cross-inter. 64. If there was any one you could recollect it, could you not?

Ans. I could not say positively I could recollect it, but I don't recollect any one now.

HENRY CLAPP.

Subscribed and sworn to before me this 31st day of July, A. D. 1883.

DWIGHT HEATON, *Examiner.*

644 EXHIBIT "D" TO DEPOSITION OF HENRY CLAPP.

RICE'S STATION, MINN., *May* 24, 1872.

DEAR BROTHER HENRY: The day I left Lee Center I called at your house as p- agreement; found it vacant. Having learned you had gone to Massachusetts, and from yourself that you are amply secured for your ten thousand dollars, and had no further interest in the Bradford property, I went to Chicago and put in answer in the McLane suit, to come off June 3 next, said answer to be recalled should you desire it, that being the conditions of the answer. Should you wish me to be at Chicago on the 3 of June please forward me three hundred dollars as a loan, the same to be paid by me to you by express or telegraph to R. W. Clapp, St. Cloud, Minnesota. Let me hear from you at once.

Yours truly, R. W. CLAPP.

645 EXHIBIT E TO DEPOSITION OF HENRY CLAPP.

Hon. J. J. Eustace:

I send this to confirm your belief that R. W. Clapp & Arnold have got this case up without McLean's knowledge. You will understand it all.

L. CHADWICK.

P. S.—Please preserve it.

P. M.: Please forward at once, Lee Center, Lee county, Ills.

646 Deposition of Wm. E. Ives, Esq., taken on behalf of the defendants, at the office of A. C. Bardwell, Esq., in the city of Dixon, September 2d, 1884.

WILLIAM E. IVES, a witness produced on behalf of the defendants, being by me first duly sworn according to law, testified as follows:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Answer. William E. Ives; 63 years of age; occupation, attorney-at-law; residence, Amboy, Illinois.

Inter. 2d. Do you know the parties to this suit, or either and which of them, and how long have you known them, respectively?

Ans. I know some of them; Henry Clapp, R. W. Clapp; I knew E. W. McLean in his lifetime, and some of the others I am slightly acquainted with.

Inter. 3d. How long have you resided at Amboy?

Answer. Twenty-nine years.

Inter. 4. How long have you been engaged in the practice of the law?

Ans. Thirty-two years.

Inter. 5. When did you become acquainted with Edwin W. McLean?

A. In 1855 or 1856.

Inter. 6. Where was he living and what was his business then?

647 A. He was living at Amboy and was in the mercantile business.

Inter. 7. Do you know personally of his selling out his mercantile business at Amboy about the month of December, 1855? If so, state to whom he sold.

Ans. I do. He sold to R. W. Clapp.

Inter. 8. Do you remember the terms of the sale? If so, state them.

(Objected to on the ground that it does not appear but what said terms were in writing, & if so the statement of the witness on the subject would be incompetent.)

Ans. I don't remember definitely, but I do remember that there was a credit for all or part and notes and mortgage given for security.

Inter. 9. Did McLean remain at Amboy or remove from there after the sale to Clapp?

A. He removed from Amboy after the sale.

Inter. 10. Where to?

A. Great Barrington, Massachusetts.

Inter. 11. State whether or not these notes given by Clapp to McLean were ever left with you at any time. If so, when were they or any of them first left with you, by whom, and under what circumstances?

(Objected to in so far as it may call for hearsay testimony or conversations with McLean.)

648 Ans. They were left with me, some of them, at about the time the sale was made of the goods, and some of them afterwards, perhaps a year or more afterwards. They were left with me by E. W. McLean. The first were left with me merely as a convenience for R. W. Clapp to pay, and the others I had for collection.

Inter. 12. Do you remember which of the notes were first left with you? If so, state.

Ans. I do not remember definitely, but I remember a note of five hundred dollars or five hundred and something.

Inter. 13. Who left that one with you?

A. E. W. McLean.

Inter. 14. State what, if anything, he said in reference to it when leaving it with you, as well as you can remember.

(Objected to as incompetent, the parties complainant suing as heirs in this case.)

A. Mr. R. W. Clapp was present at the time it was left, and McLean, at Clapp's request, wished me to receive the money and remit it to him. I think the note was soon to become due.

Inter. 15. Do you remember—if so, state—how the other notes came to your possession?

A. Mr. McLean sent them to me by letter, I think.

649 Inter. 16. Please state fully your connection with said notes, what you did, if anything, in reference to collecting them, and what, if anything, McLean did.

(Objected to in so far as it may call for conversations with McLean.)

A. My recollection is that McLean directed me to foreclose the mortgage securing the notes and that I filed a bill for that purpose in the Lee county circuit court; that afterwards McLean made an arrangement of settlement with Clapp by giving him other securities and taking up the notes.

Inter. 17. What became of the suit of foreclosure?

A. It was dismissed.

Inter. 18. Who made the arrangement of which you speak, by which other securities were to be substituted and these notes taken up; where was it made and tell all you know about it?

(Objected to for same reason as 16 Inter.)

A. Mr. McLean made the arrangements with Mr. Clapp. The arrangement was made between them at Amboy and the securities were put in my hands by McLean in the presence of Mr. Clapp. Among the securities was a draft of one thousand dollars given by R. W. Clapp, payable to McLean, upon Alfred Clapp, of New York city, which was taken by McLean and I was directed upon
650 notification of payment of that draft to surrender up the notes and mortgages given by Clapp to McLean and retain the other securities.

Inter. 19. State as well as you are able what those other securities were.

A. I cannot state definitely, but I remember that among the securities were notes and a mortgage given by a man named Craig on land in the town of Amboy; there were a number of notes given by one Cannon and some deeds to real estate.

Inter. 20. State, if you know, upon whose judgment and advice, if anybody's, that arrangement was made between McLean and Clapp for substituting these new securities for the original notes and mortgage.

(Same objection as to 16 Inter. and because it calls for conclusions of witness instead of conversations and what was said on the subject.)

Ans. I don't know; all I do know is that McLean and Clapp stated to me that they had made an arrangement; Clapp and McLean at that time seemed to be on very intimate terms with each other.

Inter. 21. Was that arrangement made upon your judgment or advice or were you consulted by McLean concerning it?

Ans. It was not made upon my judgment or advice, nor was I consulted in regard to it that I remember of.

Inter. 22. State what further was done in reference to carrying out the arrangement between Clapp and McLean after that.
651 A. The draft was not paid on presentation, and some time after, I don't know how long, McLean wrote to me that he had got into difficulty in his business, and I then took security from Clapp for the payment of this draft and surrendered to Clapp the notes and mortgage given to McLean by him and retained the other securities.

Inter. 23. Please state whether or not you have any letters received by you from McLean concerning this business. If so, produce such as you have.

(Objected to as incompetent.)

A. I have two letters that I received from McLean concerning this business.

(Witness here produced two papers, which I have marked "A" & "B" & which are hereto attached.)

Inter. 24. State when you received those letters.

A. The date of one of them is November 17th, 1867. I received

it by due course of mail. The date of the other is January 22d, 1858. I received it by due course of mail.

Inter. 25. When, with reference to their dates, then, did you receive them?

A. Within two or three days—four, perhaps—from their dates.

Inter. 26. After receiving the letter of January 22d, 1858, what, if anything, did you do with reference to these notes and securities in your hands?

652 A. I very soon took security of Clapp for the payment of the draft of one thousand dollars and surrendered to Clapp the notes and mortgage given by him to McLean, retaining the other securities in my hands.

Inter. 27. What form of securities did you secure for the payment of the thousand-dollar draft, and what did you do with it?

Ans. I had previously sold and deeded to Clapp a store situate on part of lot 5, in block 11, in Amboy, and Mr. Clapp at the time I sold it took possession of the building, but had not had his deed recorded, and he surrendered to me the deed I made him and the possession of this building as security for the payment of that draft. That security, the deed, I think, was sent to McLean, stating to him just what he had done and it remained in that way for some time; and afterwards, some time afterwards, at the request of Mr. McLean and Clapp, I conveyed this same store building to McLean, and meantime, I think, McLean had possession of the building and the rents and profits. McLean was at my office about the time the deed was made—I think at the time—and accepted the deed and received from me all the securities which he had left in my hands in regard to the matter, and expressed no dissatisfaction whatever as to what I had done, but seemed to be satisfied with the store and lot as full payment for the draft, and I never knew that he

653 was dissatisfied until nearly ten years afterwards. He never made any complaint by letter or otherwise. He continued to occupy the building by himself or his agent until 1865, when it was burned up. I am not certain about the time. It was about that time it was burned up.

(Answer objected to as irresponsive and, so far as it relates to transaction with McLean, incompetent.)

Inter. 28. Was there any incumbrance on that lot at the time of these conveyances; if so, to whom and for what amount?

(Objected to, the record being the best evidence.)

Ans. There was four hundred dollars from me to David Welty, drainage commissioner.

Inter. 29. When you took that lot and building as security for that thousand dollars what was its value over and above the $400.00 incumbrance?

A. I think it was barely worth eighteen hundred dollars over and above the incumbrance.

Inter. 30. What kind of a building was on the lot and how was it occupied?

A. It was a two-story wooden building, 18 feet front &, I think, 36 feet deep; the lower story was, soon after it was built, used as a store and the upper story finished off as a dwelling. At the time that I deeded it to Clapp the lower story was used as a meat market; the upper story, I do not remember how it was used.

654 Inter. 31. About what year was the building erected?

A. Erected in 1854.

Inter. 32. Did you own any part of that lot 5, block 11, previous to the time of these conveyances you have mentioned? If so, please state what you owned, when and to whom, if any one, you conveyed it.

(Objected to as calling for secondary evidence.)

A. I once owned the whole of lot 5, in block 11. The lot — 67 feet & 7 inches front on Main street. The east 36 feet I sold to J. D. Weddell; the east 18 feet next to that which had the store building on I sold to R. W. Clapp. I then owned the west 13 feet & 7 inches of the lot, which had a small building on it, which I occupied once for an office; that I sold to George Ryan.

Inter. 33. State whether you made the sale to Ryan before or after the sale to Clapp.

(Objected to as calling for secondary evidence.)

A. I made the sale to Ryan after I made the sale to Clapp.

Inter. 34. State whether that part sold to Clapp was the same which you obtained as security for the thousand dollars, as you have stated.

(Objected to; same as Inter. 32.)

Ans. It was.

Inter. 35. Who was in possession of that part of the lot when you afterwards sold to Ryan the west 13 feet & 7 inches of the lot?

655 A. Mr. McLean or his agent was in possession.

Inter. 36. Do you remember now how the premises conveyed to Ryan were described in the deed that you gave him?

A. My recollection was that it was a quitclaimed, and described what interest I had in the lot.

Inter. 37. Did Ryan ever come into possession of that portion of the lot which you sold to R. W. Clapp, as you have stated?

A. He did not.

Inter. 38. State whether or not you at any time purchased from Ruggles W. Clapp any lot or lots in block 25, in Wyman's Addition to Amboy.

A. I did.

Inter. 39. When did you make that purchase; what was the consideration, and how was it paid?

A. I think the purchase was in March or April, 1858. I paid him four thousand dollars for the property. I gave him in payment two one-thousand-dollar bonds against district No. 4 of the town of Amboy, and sold him this store and the ground on which it stood for two thousand dollars.

Inter. 40. How had you obtained the school district bonds mentioned?

A. I built for the district the school-house and received as part pay these bonds of one thousand dollars each.

Inter. 41. Did the bonds bear interest; if so, at what rate?

Ans. They did, at the rate of ten per cent. per annum.

656 Inter. 42. What was their market value at the time?

(Objected to as leading and incompetent.)

A. They were worth a hundred cents on a dollar.

Inter. 43. Was the property you purchased of Clapp improved or unimproved?

A. It was improved.

Inter. 44. What improvements were on it?

A. There was a house and barn, and the lots were fenced.

Inter. 45. Did you afterwards convey that property to anybody; if so, to whom?

A. James S. Briggs or his wife; I don't remember which.

Inter. 46. Did James S. Briggs ever occupy it as his residence?

A. He did.

Inter. 47. State whether you ever acquired from Ruggles W. Clapp any other lots in the city of Amboy.

A. I never did.

Int. 48. Do you remember now whether there was any incumbrance on this property which you bought from Clapp?

A. There was.

Int. 49. What was the amount of it, and what arrangement, if any, was made for its payment?

A. I don't remember the amount; it was between three and four hundred dollars—about that. Mr. Clapp was to pay it off.

Inter. 50. State whether or not your purchase of this prop-

657 erty from R. W. Clapp had anything whatever to do with the exchange of securities about which you have testified.

A. Nothing whatever.

Inter. 51. Did you receive, directly or indirectly, from Ruggles W. Clapp or from any other person any consideration of any nature for surrendering to him the McLean notes and mortgage in the way you have described?

A. I never did.

Inter. 52. For what reason did you surrender them and take the security for the thousand-dollar draft, as you have stated?

A. I supposed it would be for the best interests of McLean to do so.

Inter. 53. Had you any other object in view?

A. I had not.

Inter. 54. State whether when McLean was at Amboy and made the arrangements with Clapp for the exchange of securities the thousand-dollar draft you have mentioned was drawn at that time or subsequently.

A. I was in error in regard to my answer to a former question in regard to this draft, and would like to correct it. The arrangement

was, as I now remember it, that Clapp was to pay McLean a thousand dollors cash within a short time before the papers were to be exchanged, and afterwards the arrangement was made by which he gave a draft on Alfred Clapp in New York, payable to McLean, for a thousand dollars, and I sent the draft to McLean by mail.

658 Inter. 55. When was it, then, as you now recollect, that McLean was at Amboy and made this arrangement with Clapp?

A. It must have been perhaps in September or October, 1857; perhaps a little before that. I do not remember exactly.

Inter. 56. When was it that you took the draft of a thousand dollars, as you now recollect?

A. I think it was in December, 1857. I don't remember the exact date.

Inter. 57. When was it that you took the security or took the measures to have it secured, as you have mentioned?

A. It is difficult for me to remember the dates, it is so long ago, but my impression now is that it must have been in February or March, 1858. It might have been later than that. I can't remember.

Int. 58. You speak of having received back from McLean the deed of the Amboy lot from you to Clapp and executing directly to McLean a deed for it. Please state how you came to do that.

(Same objection as to interrogatory 42.)

A. I did that because Mr. McLean desired me to do it.

Inter. 59. Were you aware of the fact of an error existing in the description of that lot as contained in your deed to McLean?

(Objected to as leading and as assuming that an error existed.)

659 A. My attention was called to it since these proceedings commenced; then I noticed that there was an error in one word, I think. It should have been "east line" when it said "west line." If I remember rightly, the word "west" was used, whereas it should have been "east." That is my recollection now. I have not seen the deed nor a record description since my attention was called to it several years ago. The error was clearly a mistake in the writer of the deed, for the reason that there is no west line properly so called to the lot.

Inter. 60. State whether or not Edwin W. McLean ever at any time found fault with or objected to your having surrendered the notes to Clapp on account of the character of the securities which were substituted for them, or said anything to you on that subject. If so, what did he say?

(Same objection as to Inter. 42.)

A. He never did, that I remember of.

Inter. 61. What became of those notes and securities which you say were left in your hands at the time Clapp and McLean made the exchange?

A. E. W. McLean called on me and took them up.

Inter. 62. When was that?

A. I think it was in 1860 or 1861. I don't remember the date.

Inter. 63. What, if anything, was said by McLean in reference to them at that time or in reference to your action?

(Same objection as to Inter 42.)

660 A. I don't remember what was said. He found no fault with anything that I had done for him, to me.

Inter. 64. During the time of these transactions between McLean and R. W. Clapp what business was R. W. Clapp engaged in?

A. Dealing in real estate.

Inter. 65. What were his pecuniary circumstances generally reported to be during that time?

(Objected to as leading and incompetent.)

A. Good. He was supposed to be worth considerable money.

Inter. 66. State whether or not during that time he secured the confidence of and obtained credit with any people in Amboy.

(Objected to as incompetent.)

A. I think he did.

Inter. 67. Do you remember any such among the business men of Amboy that you can mention?

(Objected to as incompetent.)

A. I don't know that I can. I know that he had large transactions with Lewis Clapp.

Inter. 68. State whether or not when Edwin W. McLean was at Amboy and made the arrangement with Clapp for the exchange of securities, as you have testified, he, McLean, said to you for you to examine the notes and securities and not take any securities or notes that were not secured beyond doubt, as the security he had was good, and that he would not exchange unless he got as good se-

661 curity and one thousand dollars in cash, or anything in substance or fact like that.

(Same objection as to Inter. 42.)

A. He did not.

Inter. 69. State whether or not McLean returned home and left the matter with you to arrange and for you to examine and pass upon the sufficiencies of the notes and securities.

A. He did not.

Inter. 70. State whether or not, after the thousand-dollar draft had been sent to McLean, you received any letter from McLean in which you were told not to make any exchange of securities until the draft was paid, and then to be sure the securities were good.

A. I don't remember that I did.

Inter. 71. State whether or not it is a fact that, from anything said or written to you by McLean, you understood or had reason to understand that McLean relied upon you to examine as to the sufficiency of the securities.

A. It is not a fact. I had nothing to do with the securities or was asked to examine them.

Cross-examination:

Cross-interrogatory 1st. In what year did you move to Amboy?

Answer. 1854.

Cross-inter. 2. What attorneys were there besides yourself at that time and up to 1858?

662 A. Tooker & Felch, A. Kenyon, B. H. Truesdell. I don't remember any others. There was another—a man by name of Fuller. I don't remember his first name.

Cross-inter. 3d. In what year did McLean first engage in business in Amboy?

A. 1855.

Cross-inter. 4. About what time in that year, and had he lived in Amboy before so engaging in business?

A. I think he commenced business on coming to Amboy. I don't remember at what time in the year.

Cross-inter. 5. Had you done any business for him prior to these transactions with Clapp?

A. No.

Cross-inter. 6. Do you know what attorney, if any, had done his business before that?

A. I do not.

Cross-inter. 7. About how old a man was he when he came to Amboy?

A. I should say about 40.

Cross-inter. 8. How did you happen to become cognizant of the sale of the stock of goods by McLean to Clapp?

A. The papers were drawn in my office.

Cross-inter. 9. Do you mean the notes and mortgage from R. W. Clapp to McLean?

A. Yes.

663 Cross-inter. 10. Was this your first business in which McLean was interested?

A. I think it was.

Cross-inter. 11. Had you done business before that for R. W. Clapp?

A. Yes.

Cross-inter. 12. Did you continue to do business after that for said Clapp; and, if so, up to what time?

A. I did perhaps from time to time up to 1858 or '9 or 1860. I don't remember.

Cross-inter. 13. You had a general employment from him during those years, did you not, to do all his legal business in Amboy?

A. I did not.

Cross-inter. 14. Did your firm have such employment during any or all of those years?

A. No.

Cross-inter. 15. Did you take any part in the negotiations which led to the sale of the stock of goods by McLean to Clapp?

A. I did not.

Cross-inter. 16. Was any cash paid on the purchase?

A. I don't remember.

Cross-inter. 17. Was the mortgage given by Clapp to McLean dated when the transaction took place?

A. I think it was.

Cross-inter. 18. Give, as nearly as you can, the amounts of the notes first left with you by McLean.

664 A. There was one note of five hundred dollars—five hundred and perhaps a little over. There were others, but I don't remember the amounts.

Cross-inter. 19. Were they all secured by the mortgage?

A. I really don't remember whether they were or not.

Cross-inter. 20. Do you remember what ones you collected?

A. I think the five-hundred-dollar note that I spoke of was paid over to me in July, 1856. In August, 1854, I received on same note $244.37.

Cross-inter. 21. Did you have other collections in your hands for McLean? If so, state what ones, as near as you can remember?

A. May 30th, 1856, there was money paid to me for McLean by some one—I don't know who—the sum of $207.40—and receipted to me by McLean as in full for T. N. Hacker's note. I know of no other collections.

Cross-inter. 22. Do you remember who paid you for your services in relation to this first transaction between Clapp and McLean?

A. I do not.

Cross-inter. 23. Do you remember what was done with the mortgage to McLean?

(Objected to as indefinite as to time.)

A. No.

Cross-inter. 24. Did you have it in connection with the suit brought to foreclose the same?

A. I think so.

665 Cross-inter. 25. At or prior to the execution of said mortgage did you make any examination to ascertain R. W. Clapp's title to the land therein described?

A. I did not.

Cross-inter. 26. Did you do so subsequent to its date?

A. No.

Cross-inter. 27. Did you keep a file or in any manner preserve the letters written by McLean to you since the giving of said mortgage?

A. No.

Cross-inter. 28. Have you none of them except the two you have to-day offered in evidence?

A. I have not, except part of one, which I now show you.

(Witness here shows a paper in two pieces, which is fastened together by the examiner and attached to this deposition, marked "C.")

Cross-inter. 29. You received many other letters from him, did you not?

A. Yes.

Cross-inter. 30. What has become of them?

A. They are lost or destroyed.

Cross-inter. 31. Have you made any search for them; and, if so, how recently?

A. Six or seven years ago I made a search to find all the letters I could from McLean to me.

666 Cross-inter. 32. Have you any account with either McLean or R. W. Clapp for services rendered either of them in any way during or since 1855?

A. I have not with McLean. I don't remember whether I have with Clapp or not.

Cross-inter. 33. Did McLean ever pay you anything for your services in his or any other person's business?

A. I don't remember that he did.

Cross-inter. 34. Can you state the year when you say the arrangement for the exchange of securities was made between Clapp and McLean?

A. I think it was in 1857.

Cross-inter. 36. Do you remember what season of the year it was and how long McLean remained in Amboy on that occasion before returning to the East?

A. I think it was in September or October. I have no recollection of how long he remained.

Cross-inter. 37. Did you draw any of the papers which were exchanged for the notes and mortgage from Clapp to McLean?

A. I don't remember whether I did or not.

Cross-inter. 38. When was it that you say that McLean placed the Clapp securities in your hands in accordance with the arrangement for the exchange of some?

A. I think it was September or October, 1857.

667 Cross-inter. 39. What was at the same time done with the papers which you say Clapp was to exchange for the notes he had given to McLean in the original transaction?

A. The papers were left with me, if I understand the question.

Cross-inter. 40. Name, to the best of your recollection, the papers so left with you.

A. There was notes and a mortgage from a man by the name of Craig to Clapp, and there were notes against a man by name of Cannon and some deeds of real estate.

Cross-inter. 41. Were you acquainted at the time with either of these men, Craig or Cannon?

A. I knew them both by sight.

Cross-inter. 42. Did you at this time know anything as to the title of the lands described in said deeds and mortgage?

A. I did not.

Cross-inter. 43. Did you afterwards ascertain the condition of said titles?

A. Not that I remember of.

Cross-inter. 44. Were all these papers, including the notes from Clapp to McLean, in your hands when Mr. McLean left for his home,

in September or October, 1857, after the arrangement for exchange, to which you have referred?

A. I don't remember distinctly as to the notes from Clapp to McLean. My impression is that McLean had those notes at that time. I am not sure how it was. All the other papers were in my hands.

668 Cross-inter. 45. By other papers I understand you to mean the ones to be given by Clapp in exchange for his notes to McLean. Am I right?

A. That is my recollection. I may be mistaken.

Cross-inter. 46. Do you remember certain notes signed by William Jones?

A. I do not. I think that Mr. Clapp gave McLean other securities afterwards than those deposited with me, and it strikes me that among those securities was a deed to some land in the town. of May, in Lee county.

Cross-inter. 47. Do you know what that other security was given for? If so, what?

A. My impression now is that it was on this same matter.

Examination adjourned until Wednesday afternoon, September 3d, 1884.

WEDNESDAY, *September* 3*d*—two o'clock p. m.

Examination of WM. E. IVES resumed:

Cross-interrogatory 48. Did you not for a time act as McLean's agent in regard to the lot which you conveyed to Clapp in exchange for the Briggs property?

A. I think I did.

Cross-inter. 49. Up to what date did you so act?

A. I can't remember the date, but up to the time McLean took it himself.

669 Cross-inter. 50. Do you remember to whom Norman H. Ryan conveyed this property, which I will refer to as the Market lot?

A. I do not.

Cross-inter. 51. Do you know what became of the deed of this lot from you to R. W. Clapp?

A. It was destroyed.

Cross-inter. 52. State, as near as you can, its date.

A. I think, perhaps, it was in February or March, 1858. I don't recollect distinctly.

Cross-inter. 53. Do you remember settling with Mr. McLean for the rent you collected on the Market lot?

A. My recollection is that everything was settled up between him & me at the time he took all the papers from me into his own possession.

Cross-inter. 54. And when do I understand you to say that was?

A. I don't remember the date, but it seems to me it was in 1860 or 1861.

Cross-inter. 55. Do you say that you have no account whatever

on your books or elsewhere of the money received or collected by you up to the time of turning over said papers to him?

A. I do.

Cross-inter. 56. What, in your judgment, was this Market lot and building worth in 1865?

670 (Objected to as immaterial and not cross-examination.)

A. If the building was at that time standing on the lot I think it would have been barely worth in cash at least eighteen hundred dollars.

Cross-inter. 57. Were you connected in any way, professionally or otherwise, with R. W. Clapp in any of his real-estate transactions prior to 1861?

A. I was not.

Cross-inter. 58. You say he was dealing in real estate. How and to what extent was he so dealing?

A. He was buying and selling considerable; as to how much I could not state.

Cross-inter. 59. Were you or your firm acting for him or doing his legal business for him in any of said transactions?

A. I frequently made out papers, deeds, and mortgages.

Cross-inter. 60. Did you purchase of R. W. Clapp any other lots or land than the Briggs property?

A. I don't remember that I ever did.

Cross-inter. 61. Did he ever purchase of you in any way or trade with you for any lots or land other than the Market and Briggs lots?

A. I don't think he did.

Cross-inter. 62. When you traded him the Market lot who occupied the building thereon?

671 A. My recollection is that George Keefer occupied it as a meat market—the lower part. I don't remember who occupied the upper part.

Cross-inter. 63. Do you remember the circumstances attending your receipt of the thousand-dollar draft?

A. I do not.

Cross-inter. 64. Did Clapp deliver it to you?

A. It seems to me he did.

Cross-inter. 65. Your better recollection seems to be that under the first arrangement Clapp was to pay one thousand dollars in money before the papers were to be exchanged. Is that still your recollection?

A. Yes.

Cross-inter. 66. How long did you wait for him to pay that sum before you accepted the draft from him?

A. It must have been thirty days or more.

Cross-inter. 67. On receiving the draft did you turn over to him his notes to McLean?

A. No.

Cross-inter. 68. How long after receiving said draft did you wait before surrendering said notes to him—Clapp?

A. I cannot recollect how long it was. It must have been over

60 days, and it might have been considerable longer. I have nothing by which definitely to refresh my memory as to the time when the notes were surrendered to Clapp.

Cross-inter. 69. Did you receive the draft and other securi-
672 ties from him at the same time?

A. I think not.

Cross-inter. 70. Which did you receive first?

A. I think the securities were in my hands first.

Cross-inter. 71. Do you think they were in your hands under the first arrangement to pay one thousand dollars cash?

A. That is my best recollection now.

Cross-inter. 72. Are you sure that the Craig notes were seen by McLean before they came into your hands?

A. That is my recollection of the matter.

Cross-inter. 73. Do you say that McLean had also seen the conveyances which you say you were instructed to turn over to him?

A. My best recollection is that McLean and Clapp were together when all these papers were delivered over to me, and that McLean had examined them all.

Cross-inter. 74. George Ryan, the grantee in one of the deeds to part of lot 5, in block 11, is your brother-in-law, is he not?

A. Yes.

Cross-inter. 75. Was it by letter that McLean desired you to deed the Market lot to him?

A. I don't remember whether it was by letter or in person.

Cross-inter. 76. While the notes and other securities re-
673 ceived from Clapp in exchange for his notes were in your hands did you make any effort to collect the same or to secure Mr. McLean's interest by reason thereof?

(Objected to as immaterial and not proper cross-examination.)

A. I don't now remember what I did do in regard to the matter.

Cross-inter. 77. Examine the papers now shown you, being the files in a certain suit in the Lee county circuit court, wherein Edwin W. McLean is plaintiff and Cyrus Craig is defendant, and say by what attorneys said suit was brought, to what term of said court, and whether or not the note on which said suit was brought for five hundred dollars, signed by said Craig, payable to said R. W. Clapp and by him indorsed without recourse, was one of the notes you received to be exchanged for said Clapp notes under the arrangement you have mentioned.

(Witness was here shown papers.)

A. The suit was brought by Ives & Ives, attorneys—that is, Wm. E. Ives & Enos J. Ives; to May term, 1859. I think the note is one of the notes referred to in the question.

Cross-inter. 78. Do you remember whether you recovered judgment for plaintiff in said suit?

A. I do not remember.

Cross-inter. 79. Do you remember what were Curtis Cannon's financial circumstances?

674 (Objected to as incompetent on cross-examination, immaterial, and because indefinite as to time.)

A. I do not.

Cross-inter. 80. Had you any acquaintance with him?

(Same objection as to Inter. No. 79.)

A. I think I barely knew him by sight in 1857 or 1858.

Cross-inter. 81. How long did he live in Amboy?

A. I do not know.

Cross-inter. 82. You have referred to a mortgage as among the papers to be exchanged for the Clapp notes. To what mortgage do you refer?

A. My recollection is that it was the mortgage securing the Craig notes.

Cross-inter. 83. Do you remember by whom it was executed?

A. I think by Craig.

Cross-inter. 84. Did you place on record such of the instruments given by Clapp in exchange as were recorded?

A. I don't know.

Cross-inter. 85. Do you remember causing any of said instruments to be recorded?

A. I do not.

Cross-inter. 86. How did you come by the William Jones notes?

A. I don't remember how I did. I can't remember the notes. I presume they were with the others. I have no recollection
675 of those particular notes.

Cross-inter. 87. Examine the letters now shown you and state what ones, if any, were written by you.

(Witness was here shown papers.)

A. The ones dated Jan'y 9, 1856, August 21st, 1856, March 7, 1859, May 7, 1859, March 15th, 1861, and March 15th, 1861, were written by me; also the one dated October 18th, 1858.

Cross-inter. 88. State, if you can, by whom the letter dated December, 1857, was written

A. My brother, E. J. Ives.

Cross-inter. 89. Examine the one dated May 20th, 1858, and state, as near as you can, by whom it was written.

A. It was written by my brother, E. J. Ives.

Cross-inter. 90. Was he your partner at the date of the two letters last referred to?

A. I do not think he was.

The papers hereto attached and marked No. 1, 2, 3, 4, 5, 6, 7, 8, & 9 are here introduced in evidence and made a part of this deposition.

Examination adjourned to Friday afternoon, Sept. 5th, 1884.

FRIDAY AFTERNOON, *September 5th*, 1884.

Examination adjourned by agreement to Monday afternoon, Sept. 8th, 1884.

676 MONDAY, *September 8th*, 1884.

Examination of witness, WM. E. IVES, resumed as by agreement:

Cross-inter. 91. Examine the papers now shown you, dated April 25th, 1856, September 29th, 1856, November 23d, 1857, and April 7th, 1859, and state by whom, if you know, they were written and signed.

A. The paper dated April 25th, 1856, is in the handwriting of my brother, E. J. Ives, except the signature, which is my handwriting. The one dated September 29th, 1856, is in the handwriting of my brother, E. J. Ives. The one dated November 23d, 1857, is in the handwriting of my brother, E. J. Ives. The one dated April 7th, 1859, is in my handwriting.

(The papers in this answer referred to are offered in evidence and are hereto attached and marked Exhibits No. 10, 11, 12, & 13.)
(Exhibit No. 10 objected to as irrelevant & incompetent.)

Redirect examination:

Interrogatory 1st. You were asked in cross-interrogatory 25 whether prior to the execution of the mortgage given by Clapp to McLean you made any examination to ascertain R. W. Clapp's title to the land and answered that "you did not." Please state whether at the time that mortgage was drawn Clapp produced and exhibited to McLean any deeds or certificates concerning his title
677 to that land; if so, state what they were.

(Objected to in so far as it may call for the conversations or statements of said McLean.)

A. My recollection is he did; I think Clapp produced what purported to be an abstract of title to the land. I have no recollection of examining the abstract to ascertain the title, but I feel quite sure I saw what purported to be an abstract.

Inter. 2. In the letter dated May 20th, 1858, occurs this sentence: "At the time the check was drawn I made the arrangement with Clapp as directed by you when here and deposited the papers with Ambrose & Little, and when I received your letter containing statement of your probable failure I immediately exchanged papers with Clapp and took good and sufficient security for the payment of the check, which must be paid." Please state to what security for the payment of the check that refers.

(Objected to.)

A. It refers to the store, lot, and building situate on lot 5, block 11, in Amboy.

WILLIAM E. IVES.

Subscribed and sworn to before me this 8th day of September, A. D. 1884.

——.

678 EXHIBITS TO THE TESTIMONY OF WILLIAM E. IVES.

EXHIBIT No. 10.

ILLINOIS, AMBOY, *April 25th*, 1856.

To all whom it may concern:

This is to certify that we, the undersigned, are well acquainted with R. W. Clapp, and by these presents we certify that according to our best judgment his real estate in the county of Lee and State of Illinois is as follows:

Lot No. 3, in block 25, in Wyman's Addition to the town of Amboy, with a good dwelling-house upon the same, & is insured for the sum of $2,000, is worth in cash three thousand five hundred dollars; lot No. (10), in block No. (3), in the town of Amboy, with a good store on the same 24 x 60 & three stories; the whole building now rents for $1,100 per annum, and is worth at least $5,000 *dollars* cash; also he has promissory notes to the amount of over seventeen hundred dollars secured to be promptly paid by deeds of trust on good unincumbered real estate, and also 120 acres of land within one & a half miles from the town of Amboy, and is worth 20 dollars per acre; said land was deeded to R. W. Clapp by A. B. Searles. The lands adjoining have recently been sold for the sum of 25 dollars per acre; also other lands in the said county, to the amount of 320 acres, worth from 5 to 15 dollars per acre.

W. E. IVES.

679 EXHIBIT "C."

GT. BARRINGTON, MASS., *May 30th*, 1856.

Rec'd of W. E. Ives, Esq., p'r express two hundred seven & $\frac{40}{100}$ dollars in full for T. N. Hacker's note left with said Ives for collection.

E. W. McLEAN.

W. E. Ives, Esq.

DEAR SIR: Above please find a receipt for the am't of the Hacker note, which came duly to hand p'r express.

Clapp has been here, and has promised to pay this week in New York. I hope he will.

Resp'ly yours, E. W. McLEAN.

680 EXHIBIT No. 1.

AMBOY, *July 9th*, 1856.

Mr. E. W. McLean.

DEAR SIR: Enclosed please find check for $500 *dollars;* one per cent. I paid for the same, which makes $505, which you will please forward receipt for. Clapp promises to pay the balance of the $735 note & interest this week without fail.

And the $1,000 *dollars* note he says he will pay as soon as he can.

If you desire to have the matter put in suit I will commence immediately, but we cannot get judgment until September. I have no doubt, however, but that Clapp will pay as soon as suit is commenced, if not before.

Please let me know your mind in the matter, & I will proceed accordingly.

Yours truly, W. E. IVES.

681 EXHIBIT No. "2."

AMBOY, *Aug.* 21*st*, 1856.

E. W. McLean, Esq.

DEAR SIR: Enclosed please find check for $244.37, for which I paid cash $246.84, being the balance your due on the Clapp note of $735 *dollars*, with the interest at ten per cent., less my fee for collecting. Clapp was unwilling to pay more than ten per cent. on the note, & of course I could collect no more by law.

I have had a good deal of trouble to collect this of Clapp. If promises were money with him you would have no difficulty in getting your pay. I have but little hope that Clapp will pay the $1,000 note; I may, however, be able to get a part of it. I will take such measures to collect the note as you direct. The note is well secured, but I suppose you want the money. I may get a part of it, & I think if I were in your place I would take judgment on the note, or so much as shall remain due. I assure you I will do the best I can to collect the money for you at the earliest possible time; but if he won't pay he must be made to pay. You will please acknowledge the payment of the $735 note and interest by return mail, and oblige

Yours truly, W. E. IVES.

682 EXHIBITS TO THE TESTIMONY OF WILLIAM E. IVES.

EXHIBIT No. 11.

AMBOY, *Sept.* 29*th*, 1856.

Mr. E. W. McLean.

DEAR SIR: Yours of the 18th came duly to hand. I have been so busy that I have neglected to write you till now. I am attending court now; will be through this week. I think I shall be able to get a part of that note collected soon. Clapp is, I think, doing pretty well in the way of making money. If I sue it I shall have to commence the suit in the circuit court, & it then would take six or eight months to collect it. I think I shall be able to get it sooner than that. In the mean time, however, at your request, I will keep you posted in the matter & do the very best I can.

Yours truly, W. E. IVES,
P'r E. J. I.

683 EXHIBIT "A."

GT. BARRINGTON, MASS., *Nov.* 17, 1857.

W. E. Ives, Esq.

DEAR SIR: It is a good while since I have heard from you. I wrote you some three weeks since, requesting you to write me what the prospect was of Clapp paying and making the change of papers, as he agreed. When I was at your place I also wrote him at the same time, but have not heard from him since. I have been waiting anxiously to hear from you, and have been hoping to receive some money from him. Please write me by return mail and give me all the information you can about my matters and what Clapp expects to do for me, and when I may expect some money from him. Times are hard here, and we want the money very much in my business. I see that money is getting easier in New York and exchanges are getting back to the old rates. I also wrote you to send me separate receipts for each of the notes which you hold for collection, and when I receive them I will return the receipt I now hold. I shall expect to hear from you soon, and I hope you will be able to get some pay out of Clapp, for I do need it. How do the times effect the price of real estate with you? Has it fallen off much; if not, will it not do so? What is wheat worth with you?

Respectfully yours, E. W. McLEAN.

Enos. Enos J. Ives, Long Grove, Kendall county, and State of Illinois: Is the Lee county circuit court April?

E. W. McLEAN.

684 EXHIBIT No. 12.

W. E. Ives, attorney-at-law and notary public, Amboy, Ill.

W. E. Ives & Bro., real-estate brokers & general insurance agents taxes paid, abstracts of titles furnished, money loaned on good security, collections made with promptness and fidelity.

AMBOY, ILL., *Nov.* 23*d*, 1857.

Mr. E. W. McLean.

DEAR SIR: Yours of the 18th inst. came duly to hand, & in reply will say that at the time I rec'd your favor before this Mr. Clapp rec'd one from you and showed it to me & sat immediately down at my table and wrote you &, I suppose, sent it to you. This is the reason I have not replied to your last. He has not as yet made an arrangement, but has been trying to make and (I am well satisfied) for some time past, by which he could obtain some money. He says he has one now in view which he thinks he can accomplish.

I will write you soon again & do the very best I can in the matter. I am trying now all the time to bring about the matter so that I can obtain some money for you.

You will please return the other receipt by return mail & oblige

Yours truly, W. E. IVES,
p. BRO.

685 EXHIBIT No. 3.

W. E. Ives, attorney-at-law and notary public, Amboy, Ill.

W. E. Ives & Bro., real-estate brokers & general insurance agents; taxes paid, abstracts of titles furnished, money loaned on good security, collections made with promptness and fidelity.

AMBOY, ILL., *Dec.*, 1857.

Mr. E. W. McLean.

DEAR SIR: Enclosed please find draft for one thousand dollars from R. W. Clapp, which you will please acknowledge when rec'd. I have nearly made arrangements with Clapp, as we talked of doing when you were here, though I shall not deliver up any papers until this draft is paid. If that should be paid when due I think that the arrangement I have made will then be consummated.

I hope all will be satisfactory to you.

Yours truly,

W. E. IVES,
p. BRO.

686 EXHIBIT B.

NEW YORK, *Jan.* 22, '58.

W. E. Ives, Esq.

DEAR SIR: I am in trouble in my business matters; our store was closed last week by the sheriff. I am now in New York trying to compromise matters with my creditors so that I can go on again. They know something of my matter West. I have represented the condition which they are in as being bad; that I brought suit last spring and that the parties plead usury, and that I did not know when I should realize on it and how much. I turned out one of the $2,209 notes as collateral last spring, and I have represented that I now have a note of $1,000 & a note $2,200, which is what I have in my hands. You will probably be called upon in relation to the matter, and you will, of course, represent it as a bad concern and doubtful what will come out of it, as I am sure we can truly think & say. A. Clapp has not accepted the draft, but thinks R. W. will send the funds to pay it. I do hope he will, but I have fears about it. Do what you can for me. Let me hear from you at Gt. Barrington.

Truly yours,

E. W. McLEAN.

Confidential.

State whether parties have written you or called on you, &, if so, what you told them.

687 EXHIBIT No. "4."

AMBOY, *May 20th*, 1858.

Mr. E. W. McLean.

DEAR SIR: Yours of a few days ago came to hand in due course

of mail. Why it is that Clapp has not paid that check I do not know. Two or three times he told me that he had paid it. I saw him after I got your last letter & he said he supposed it was paid; but it seems you have not yet rec'd the money. I do not know what it means. Clapp, at the present time, is hard run. It is almost impossible for any of us here in the West to raise money at the present. At the time the check was drawn I made the arrangement with Clapp, as directed by you when there, and deposited the papers with Ambrose — Little, and when I rec'd your letter containing statement of your probable failure I immediately exchanged papers with Clapp & took good and sufficient security for the payment of the check, which must be paid.

The notes which I took in exchange for Clapp's notes are the notes against Craig & Cannon, secured to be paid by warrantee deed, so that the payment when due must be prompt or the parties loose the land.

The title to the said land is in you & on record in this county according to law.

I rec'd a letter some time ago from your creditors stating
688 that the mortgage against Clapp & in your favor you had assigned to them, & that all payments thereafter made on the same must be made to them.

I think the exchange of papers with Clapp is, without question, the best thing for you that could be done in the matter.

I do not believe that we could have made on that mortgage which Clapp gave you one single cent, for, to my great surprise, on a thorough examination of the records in our county, — that R. W. Clapp never had a title to the land mortgaged to you to secure those notes, but I do know that he had a deed from which that mortgage was made of that land, but it appears that he never put it on record; so that if we had litigated the matter with him on that mortgage it would have cost a large sum of money and a long time before it could have been brought to completion; but the papers which I now have you can have no trouble with, for you must have the money when due or the land.

I do not know how your matters stand relative to your N. Y. creditors, but if I were in your place, if you could turn out the notes in my hands to them, and thus release you from embarrassment, I should certainly do it. The check which you have from Clapp I do certainly believe will be paid in a few days, as the payment of it is amply secured. I am almost willing to say to you that if Clapp
does not pay it in thirty days from this time I will pay it
689 and take the property on which it is secured.

When the check is paid, or before, if you desire, I will give you a full statement of the notes & land which I have taken, by your instruction, of Clapp.

I think I have done well for you in this matter, and if I can do anything for you in your N. Y. matters I will most cheerfully do it. As I said before, if you can turn these matters to your N. Y. creditors you had better do it. I have had a very troublesome job of

this matter, but now think it is all right. Let me hear from you on receipt of this.

Yours truly, W. E. IVES.

690 EXHIBIT No. 5.

AMBOY, *October* 18*th*, 1858.

Mr. E. W. McLean.

DEAR SIR: Yours of the 8th inst. was duly received; contents noti*ce*.

Clapp did not go to N. Y. as he said he was going. The next day after I wrote you he showed me a dispatch from his bro. in N. Y., that he had 2,000 dollars subject to the order of R. W. Clapp in N. Y.

R. W. sent a dispatch to have the same placed to his credit, and promised me to give a check in your favor as soon as he received an answer from his brother, which he says he has not received yet.

Now, Clapp's bro. in N. Y. is either deceiving you or he had no doubt that R. W. would pay the draft as soon as it was sent to me. I have the draft, the payment of which is secured by a store and lot which is worth at least fifteen hundred dollars, and if the draft in your favor is not paid within 20 days from this date I will sell the store & lot, if I do not get more than $1,100 *dollars* for the same, and apply the proceeds on that draft.

Clapp told me this day that he should get to N. Y. in a day or two, and as soon as he got there he could pay that draft immediately.

691 I have had a great deal of trouble in this matter, & I do hope that the money on the draft will be paid without further trouble. In regard to the security on the other notes, they are secured to you by warrantee deed, which deed or deeds are on record in this county. The notes are the same and the security the same that you agree- with Clapp to take when you were here.

When Clapp leaves for N. Y. I will immediately drop you a line, and if you will try and see him there I think you will get the money on the draft without fail.

Yours truly, W. E. IVES.

692 EXHIBIT No. 6.

AMBOY, *March* 7*th*, 1859.

Mr. E. W. McLean.

DEAR SIR: Enclosed please find deed of lot to R. W. Clapp, as per request. Mr. Clapp is mistaken in regard to my agreeing to take the lot for eight hundred dollars. I was constantly urging him to pay the draft, and he told me that I might have the lot for $800. I replied that I would be glad to take it at that, but I could not raise the money.

Mr. A. G. never has spoken to me in regard to the matter you speak of; neither has Clapp discharged the incumbrance on my house. The Jones notes you speak of are in my hands for you, as collector, to the discharge of some incumbrance on the Craig farm.

Craig has not paid anything on those notes. It is true, as Clapp said, that Craig agreed to pay the interest in corn if he could, but has failed thus far.

I cannot write more at this time.

Yours truly, W. E. IVES.

693 EXHIBIT No. 13.

AMBOY, *April* 7, 1859.

Mr. E. W. McLean.

DEAR SIR: Enclosed please find deed to Ambrose & Little, as requested. Absence from home is the only excuse for not replying before. You can say to Clapp that in regard to the rent I will make all right with him. Noth- would please me better than to take the property myself, but it is impossible for me to raise the money. We have no money in the West at present to speak of.

Yours truly, W. E. IVES.

694 EXHIBIT No. 7.

AMBOY, *May 7th*, 1859.

Mr. E. W. McLean.

D'R SIR: Herewith I transmit you the abstract of title to said lot. You will see that the title is in me; that there is an incumbrance of $400, on which the interest is paid and is not due until March, 1860. Mr. Clapp knows all about the incumbrance, and he may take the money due me from him to discharge said incumbrance. Say to Clapp that I hope he will pay your draft without delay, and I will make all matter right between him and me.

Hoping all will be satisfactory, I remain,

Yours truly, W. E. IVES.

695 EXHIBIT No. 8.

By State authority.

It is a duty every man owes to his family and the community in which he lives to keep his property fully insured in sound and responsible companies.

American Exchange Fire Insurance Co. (New York). Fire only

Geo. C. Davies, gen'l ag't, Cincinnati; J. C. Davies, as't.

Losses liberally adjusted and paid in cash when required.

Agents in all the principal towns and cities.

Rates for insurance as low as a due regard to the security of the assured will permit.

AMBOY, *March* 15*th*, 1861.

Mr. Joseph Ball, Esq.

DEAR SIR: Will you do me the favor to send me a memorandum of the time when the land was sold in the case of Jonas Eli & Thockmorton *vs.* R. W. Clapp & wife.

It was sold, I think, some time in April, 1860; also the am't for which it was sold, & I will make all right for your trouble.

Yours truly, W. E. IVES.

The case was at the Nov. term, 1859.

"Friday, the twenty-seventh day of April, A. D. 1860."

"Eight hundred and thirty dollars."

696 AMBOY, *March 20th*, 1861.

Mr. E. W. McLean.

DEAR SIR: The above is a letter addressed by me to the deputy clerk, & his answer says the 20th of April; $830; there will be ten per cent. interest on the same.

What the land would now sell for in cash I do not know. It sold, I think, four years ago for over $5,000 *dollars*. It is well located & will sell for a good price, without doubt. You can redeem it within three months after the year expires if you choose, but you redeem as a judgment creditor. You have a judgment against Craig of $500 & interest.

Yours truly, W. E. IVES.

697 EXHIBIT No. 9.

AMBOY, *March 15th*, 1861.

Mr. E. W. McLean.

D'R SIR: Yours of the 9th was duly received. I shall be in Dixon in a day or two & will get the am't interest and time from the records, which will be correct, & will forward to you.

You can send the redemption money to the clerk of the circuit court, which will be the same & as reliable as though you were present yourself.

Yours truly, W. E. IVES.

698 Exhibit 8 of defendants' testimony, James F. Sanford, examiner.

JULY 16TH, 1883.

At the residence of Lot Chadwick, in Lee Center, Lee county, Illinois.

To be prefixed to the deposition of Lot Chadwick.

Solicitor for the complainants objects to the continuing of the testimony taken in this case of Lot Chadwick in its present form, referring to the testimony taken by the examiner October 24, 1873, waiving, however, any objection to any change in the title of said cause.

Defendant offers to continue the examination of said witness from the point where it ended on Oct. 24, 1873, but owing to the objection interposed will have the witness resworn and begin his examination anew.

To which counsel for complainants objects.

699 LEE CENTER, *July* 16, 1883.

LOT CHADWICK, one of the defendants, being duly sworn

according to law, in answer to questions testified as follows, to wit:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Answer. My name is Lot Chadwick; my age is nearly ninety-one; I have no occupation at present; residence, Lee Center, Lee county, Illinois.

Inter. 2d. Do you know the parties to this suit or either and which of them, and how long have you known them respectively?

Answer. I do not know the complainants. I have seen Ruggles W. Clapp a few times; can't say I have any personal acquaintance with him. William E. Ives—I am acquainted with him. I am acquainted with Henry Clapp. I am acquainted with William C. Depue. I am Lot Chadwick named as one of the defendants. I have been acquainted with Mr. Ives, I should say, twenty-five years. Henry Clapp I have been acquainted with a long time; I can't tell how many years. I have been acquainted with Depue, I should say, six or seven years.

Inter. 3d. Did you know Edwin W. McLean in his lifetime?

Ans. No, sir.

Inter. 4. Did you ever have any correspondence with him?

Ans. None whatever.

700 Inter. 5. For how long time have you lived in Lee county, Illinois?

Ans. It was in the year 1838 that I came to this county.

Inter. 6. State whether or not you ever purchased from Henry Clapp any lands; if so, state whether or not they include those in controversy in this case.

(Objected to.)

Ans. I purchased what is known as the Henry Clapp farm, in the town of Bradford. They do include the lands in controversy in this case. I can give you a description of the lands, if you wish.

Inter. 7. Please describe it.

Ans. The E. ½ of S. W. ¼ of 28, the E. ½ of N. W. ¼ of 33, the N. E. ¼ of 33, the N. E. ¼ of S. E. ¼ of 33, the N. W. ¼ of the S. W. ¼ of 34, the W. ½ of N. W. ¼ of 34, all being and laying in township (21), range 11 east.

Inter. 8. When did you make that purchase?

(Objected to.)

Ans. The 1st day of March, 1859.

Inter. 9. What was the purchase price of that property, and how, if at all, was it paid?

(Objected to.)

Ans. The price was ten thousand dollars. Well, I paid in the first place two thousand one hundred and fifty dollars. I next paid

an execution that E. Lee Clapp held against Woodbridge
701 Clapp for seven hundred and sixty dollars and eighty-seven cents. In the next place I paid ten dollars for the stamps that was put onto the deed. The next place was the expense of going to Dixon, seven dollars. I next paid Trobridge, I think, about one hundred and seventy dollars, but am not certain. Then I paid Mr. Truesdell two hundred and forty-four dollars on two executions of Emmerson *vs.* Henry Clapp. I paid Mr. Tooker for an execution of Harriet Chase, one hundred and twenty-four dollars and some cents; don't remember how many. I paid Dr. Gardner on an execution one hundred and forty-eight dollars. I paid Mr. Little back taxes. I could not state the exact amount. It was one hundred and sixty or seventy or eighty dollars, somewhere about that. I paid for the back tax- another year several amounts to several parties. I don't remember all the separate amounts, but do recollect the aggregate, which was just two hundred. I paid to Chas. F. Ingalls. I paid as part of this back taxes to John Dement and E. B. Stiles and Jason Aryes. The sums particularly I cannot recollect, but the aggregate was two hundred dollars. I paid ten dollars for a cemetery lot. I paid three dollars for completing an abstract. I don't recollect anything more of those items. I paid in addition to that Mr. Clapp's notes, which amounted, in the aggregate, to
702 six thousand and about seventy dollars. I think may be more than that. I believe that is all.

Inter. 10. Do you know whether anything was paid for the writing of that deed; if so, who paid for it and how much was paid?

(Objected to.)

Ans. One dollar. I paid it.

Inter. 11. State how the two thousand one hundred and fifty dollars was paid.

(Objected to.)

Ans. One thousand was paid in Lee county bonds, one thousand was paid in Sherman Shaw's note, and the interest upon the bonds and note amounted to one hundred and fifty dollars.

Inter. 12. State a little more particularly, if you can, what the notes of Henry Clapp were, amounting to over six thousand dollars.

(Objected to.)

Ans. I cannot state the amount of each individual note.

Inter. 13. Who owned or held those notes of Henry Clapp at the time?

(Objected to as incompetent and leading.)

Ans. I did.

Inter. 14. Where had you obtained them?

Ans. I obtained them from Mr. Clapp.

Inter. 15. When? As nearly as you are able to say, state.

Ans. I cannot recollect.

Inter. 16. What, if anything, was their consideration?

703 (Objected to as incompetent and because the notes themselves are the best evidence.)

Ans. Money and bonds—United States bonds.

Inter. 17. Can you state how many of them there were?

Ans. I think there were five, but am not certain.

Inter. 18. State whether or not a cooking stove had anything to do with the consideration for that deed. If so, tell about that.

(Objected to as incompetent.)

Ans. Yes, sir; it had. I bought the cooking stove and paid, I think, thirty-odd dollars for it, which I should have put in before, but it slipped my mind.

Inter. 19. For whom did you buy it?

Ans. For Mr. Henry Clapp.

Inter. 20. State when the deed made by Henry Clapp and wife to you was drawn and executed and who were present.

Ans. It was made at my house in the next room. Esquire Bodine drawed and executed the deed. Henry Clapp and his wife, myself and my wife, were all that were present.

Inter. 21. When, if at all, was the consideration for this deed paid?

Ans. The two thousand one hundred and fifty was paid down and the notes against Henry Clapp was handed over to him shortly after, as per agreement. The seven hundred and sixty-one
704 dollars, nearly, I paid on the 3d of March, 1869. The others were paid at various times as I could get at them to pay them, but I should think within two or three months of the time of passing the deed. They were mostly claims upon the land.

Inter. 22. Who, if any one, was present when the twenty-one hundred and fifty dollars was paid?

Ans. Mr. Clapp and his wife, myself and my wife, and Esquire Bodine were present.

Inter. 23. State whether or not Fletcher D. Clapp was present during any part of that transaction.

Ans. He was not present.

Inter. 24. Do you remember, if so, state, whether that twenty-one hundred and fifty dollars was there counted by any person, or how it passed from you to Henry Clapp?

Ans. I passed the bonds and notes into Esquire Bodine's hands to count them and let him see them, so as to identify them if necessary. I then took them and passed them into Mr. Clapp's hands.

Inter. 25. Do you know one Martin L. Arnold?

Ans. I have seen him four times.

Inter. 26. Was he ever at your residence, in Lee county?

Ans. He was once.

Inter. 27. When was it?

Ans. I should think it was in December, 1868, but cannot state the time positively.

705 Inter. 28. Who were present at that time?

Ans. Mr. Clapp and his wife, myself and my wife, and Mr. Arnold.

Inter. 29. State whether or not Fletcher D. Clapp was there present.

Ans. He was not present.

Inter. 30. Did any conversation take place at that time between the parties present? If so, who participated in the conversation?

Ans. Mr. Clapp and his wife and Mr. Arnold did about all the talking there was done.

Inter. 31. Did you say anything in the conversation?

Ans. I think it likely I did say something about an abstract which Arnold had in his possession which they were getting a copy of.

Inter. 32. Please relate, if you can, all that you heard said or said yourself during that interview, all as well as you can remember.

Ans. As to myself, with regard to what I said, if my memory serves me right, was with reference to that abstract. I had some curiosity to know whether it included those deeds that had been purloined from the register's office and mutilated, and I presume that I made some inquiry—perhaps saw the abstract. Mr. Arnold allowed them to copy the abstract, as I understood it. He
706 also spoke of a draft that he had that was made out by R. W. Clapp; said he owned the draft; had purchased it of McLean. Mr. Clapp and his wife possessed some of Woodbridge Clapp's papers and seemed interested to point out some of Woodbridge's property, and did point out a piece of land in May town. and another piece in Whiteside county. They all thought that that would satisfy the draft of one thousand dollars. I don't know whether it is proper for me to say it or not.

(Objected to so far as it covers things not spoken at the time referred to.)

Inter. 33. What papers, if any, did you see during that interview?

Ans. I saw the abstract; did not read it, but read the copy.

Inter. 34. Who made the copy, if you know?

Ans. Mrs. Clapp.

Inter. 35. Did you see or read any other papers during that interview?

Ans. None whatever.

Inter. 36. State whether or not during that interview you examined the McLean mortgage and compared it with the abstract and told Henry Clapp he better compromise it or better settle it.

Ans. I did not see any McLean mortgage. I did not hear any talked; did not tell—say to Henry Clapp he had better settle it.

707 Inter. 37. State whether or not during that interview you saw any of the notes or papers which are connected with this case and said to have been given by R. W. Clapp in exchange for the notes secured by the McLean mortgage, and whether you examined such notes or papers then, and whether Arnold told you or said then that they were all worthless, and that they, Arnold and

McLean, should rely on the mortgage—that it had never been released.

Ans. There was no such papers as talked of in my sight and I never heard of any such papers. I never heard about the dealings of McLean with Woodbridge Clapp until after I had bought the land.

(Objected to as to when he heard of the dealings of McLean with Clapp.)

Inter. 38. State whether or not you heard anything said by Arnold during that interview to the effect that they, Arnold and McLean, should rely on the mortgage—that it had never been released.

Ans. I did not hear anything said in regard to the mortgage. I did not hear the mortgage read.

Inter. 39. State whether or not during that interview Henry Clapp asked you what the difference would be, as he had the notes, but the mortgage was still on, and you replied thereto that if those notes were fraudulently got up it would make no difference,
708 the mortgage would hold the land; and whether Henry Clapp asked you if you did not think by Arnold's talk it could be settled without going into law about it, and you replied that your advice would be to settle the matter as quick as he could; that you always avoided going to law when a man was willing to settle for what was right. State whether this or anything in substance like it was said during that interview.

(Objected to.)

Ans. There was nothing said about it whatever in my hearing. It was not alluded to with regard to the notes being fraudulently given up then. I knew nothing about it. If I had given my opinion about it at that time I should have said the notes having been given up, the conditions of the mortgage had been complied with, and therefore the instrument was null and void. That was my opinion of it and is at the present time.

(Objected to when — knew of the notes being given up and as to his opinion.)

Inter. 40. State whether or not during that interview you heard anything said by Henry Clapp to the effect or in substance that Woodbridge Clapp ought not to have gone off and left such a claim hanging over my farm.

(Objected to.)

Ans. Nothing whatever.

Inter. 41. State whether or not the coming of Martin L. Arnold on that occasion to your residence was at your instance or request.

709 Ans. I knew nothing about Martin L. Arnold at that time, and had no business relations with him whatever. I may have seen him, but not to know the man; consequently, I could not have sent for him to come on Sunday.

(Answer objected to as not responsive.)

Inter. 42. Did you or not send for him?

Ans. At that time or at any time; no, sir.

Inter. 43. At the time of that interview had you in your mind any purpose or intention of buying this land of Henry Clapp?

(Objected to.)

Ans. No. sir.

Inter. 44. Up to that time had any negotiations for its purchase taken place between you and Henry Clapp?

(Objected to.)

Ans. No, sir.

Inter. 45. When did the negotiations, if there were any between you for its purchase, begin, and how long did they continue?

(Objected to.)

Ans. I think but one day before I had the deed made out. It may have been two days, but I think it was but one.

Inter. 46. Did you ever see Martin L. Arnold and have any conversation with him or he with you at any other time? If so, when and where was it, and what was said?

(Objected to as not limited to the matter in controversy or to conversations referred to by any witness.)

710 Ans. I did see him at another time. It was the last of April or first of May, 1869. I had been to the post office and was then returning, and he spoke to me. He said, after passing the time of day, I hear that you have bought the Henry Clapp farm. He then told me about the McLean mortgage, that he had it. I told him that that mortgage was not worth the paper it was written on. I had the notes and that complied with the conditions of the mortgage. Said he, Have you seen the notes? I told him I had seen them, and that ended the conversation.

Inter. 47. In what town or village was the conversation?

Ans. In Lee Center.

Inter. 48. State whether or not any part of the consideration which you have said you paid for the deed made to you by Henry Clapp and wife for the land involved in the McLean mortgage in controversy was ever refunded or paid back to you or to any person for you by Henry Clapp or by any person for him or on his account.

(Objected to.)

Ans. No, sir.

Inter. 49. State whether or not after Bodine had left your house on the day that deed was executed you took back the bonds and notes or any money and bonds that on that occasion had been paid by you to Henry Clapp in the presence of Bodine.

(Objected to.)

711 Ans. No, sir.

Inter. 50. State whether or not on that occasion, either before Bodine came to your house to prepare the deed or after the deed had been executed, Henry Clapp, in the presence of his wife and Fletcher D. Clapp or out of their presence or the presence of either of them, told you that when they got this matter straightened up you was to deed his wife a hundred acres of land and the balance back to him, and did you say, I will take this, Mr. Clapp, and shall do what is right with you when I get matters straightened up. Did any such conversation then or at any time take place between you?

(Objected to.)

Ans. No, sir.

Inter. 51. State whether or not on that occasion, in the presence of Fletcher D. Clapp, Henry Clapp said to you that he wanted you to take entire charge of the money that came from the crops and do as Cephas Clapp had been doing for years and he would pay you three dollars a day for what time you put in looking after matters, or did any such conversation or anything in substance like it take place?

(Objected to.)

Ans. There could not have been any such conversation in the presence of Fletcher Clapp, because he was not here. There never was any such conversation whatever.

Inter. 52. Did you then, in the presence of Fletcher D.
712 Clapp, or at any other time say to Henry Clapp, I will keep a straight account of every dollar I receive from the place, Mr. Clapp, and shall charge you for what monies I pay out for you, and shall charge you interest and charge one dollar and a half for every day that I put in attending to this business, and say that three dollars a day was too much, or did you say anything in substance or effect like the matter contained in this question?

(Objected to.)

Ans. Nothing whatever of the kind was said.

Inter. 53. State whether or not, on the day that deed was made and before it had been drawn in the presence of Fletcher D. Clapp, Henry Clapp wanted to borrow money of you and mortgage the coming crops to you, and you said you would not let him have the money unless he would put the place in your name, and did Henry Clapp say that he wanted to keep his own property in his own name, as it had always been until the last year in some one's else's, and that the crops would be perfect security and surety—his thirds would be worth fifteen hundred dollars?

(Objected to.)

Ans. There was nothing of the kind said or talked of. When I bought the land there was an execution obtained by E. Lee Clapp against Woodbridge Clapp, and the land was advertised for sale.

That is what determined me to buy the land. I was told that Lee Clapp said that Henry Clapp had no friends to furnish the
713 money, and that he should get the farm for a nominal sum, and that induced me to buy the farm—to save myself.

(Objected to, all after the first sentence being not responsive.)

Inter. 54. What part of your answer relating to what induced you to buy the farm at the time you did might not be regarded properly in response to the question I had asked. Therefore I will now ask you to state what circumstance, if any, induced you to buy that farm at the time you did.

(Objected to.)

Ans. I should have to answer the same thing over again. The farm was under an execution and advertised for sale. I was told that Lee Clapp said that Henry Clapp had no friends that would furnish him the money; therefore he should get it for a nominal sum. That induced me to buy it—to save myself.

Inter. 55. State whether or not on the day the deed was made to you you said to Henry Clapp, in the presence of Fletcher D. Clapp, that you would not advance the money unless he would deed the entire property to you, and did Henry Clapp say that he would go down and see Cephas Clapp and he would let him have the money, and did the wife of Henry Clapp tell him to hold on; that she would send for some wine, and that after he drank that he would not feel so nervous? Was anything like that, in substance or effect, said on that occasion?

(Objected to.)

714 Ans. Nothing whatever that I heard. It could not have been in the presence of Fletcher, because he was not here at all.

Inter. 56. State whether or not any talk of that kind occurred between you and Henry Clapp and his wife in reference to this land at any time.

(Objected to.)

Ans. No, sir.

Inter. 57. State whether or not, to your knowledge, any wine was got for and drank by Henry Clapp on that occasion.

Ans. There was not any got, to my knowledge, or drank. He came directly from the farm; had no opportunity of getting any, and I am sure there was none brought here. If there had been any brought there would have been some person to bring it, and there was none.

Inter. 58. State, if you can, what was Henry Clapp's condition on that day—as to whether or not he was intoxicated.

Ans. He had every appearance of being — perfectly sober as I am now. I have not drank any intoxicants for years.

Inter. 59. State whether or not on that occasion, in the presence of Fletcher D. Clapp, Henry Clapp said to you that when they got

this matter straightened up you was to deed his wife a hundred acres of land, and, further, she then said she did not ask but for forty, and Henry Clapp then said she was a trump and should have
715 a hundred, and whether she then asked him how much that would be worth, and he said it would be worth four thousand dollars.

(Objected to.)

Ans. There was nothing of the kind said in my hearing.

Inter. 60. Do you remember or did you know of Henry Clapp and his wife making a visit to the East at any time in the year 1868 or '9?

Ans. I think they did make a visit to the East in 1868.

Inter. 61. State whether or not they were at your residence after their return from the East.

Ans. They came to my house upon the farm.

Inter. 62. After Henry Clapp and his wife had made that visit to the East did they come to your house and remain about a week?

Ans. I am not aware that they did. I don't recollect that they did.

Inter. 63. While they were in the East where, if you know or remember, was Fletcher D. Clapp?

Ans. I don't know anything about him; don't remember. I think they went to the East once after him. He was spirited away once, and they went after him; they went to the East twice.

Inter. 64. Was there an occasion in 1867 or 1868 when Henry Clapp and his wife went to the East and left Fletcher D.
716 Clapp with you at your residence during their absence?

Ans. I can't say as to that. I kept the post office; had no assistance, & was as much shut up as a criminal in his cell.

Inter. 65. State whether or not after having returned from the East in the year 1868 Henry Clapp and wife and Fletcher D. Clapp remained at your house about a week, during which time conversations took place between Henry Clapp, his wife, and you concerning the title to this farm and the McLean mortgage.

Ans. I have no recollection of their having staid at my house nor of any conversation whatever about the McLean mortgage. The McLean mortgage from the first time I heard of it was thought to be dead. It had been some twelve years or more since the notes were taken up. It was thought there was nothing more to be done about it but to make out a release if the one which was thought to be in existence could not be found.

(The last 11 lines objected to as not responsive.)

Inter. 66. State whether or not after the return of Henry Clapp and his wife from the East a conversation took place at your house in the presence of Fletcher D. Clapp, between yourself and Henry Clapp and wife, in which they seemed to think that they had got the title all clear on the farm except a certain claim held by a
717 man by the name of McLean, and that a man in Amboy by the name of Arnold had this claim in his hands as agent or

was attending to it, and that they had seen this Arnold and expected him up in a few days, and they wanted you to look over the papers and give your opinion on its——

(Objected to.)

Ans. No, sir; there was no such conversation as that, because they considered or appeared to consider the McLean mortgage as settled, and with regard to the papers, and looking them over, it is all a fiction or a falsehood if anybody has said it to be the case.

Interrogatory 67. Did any such conversation in reference to your examination of papers held by Arnold concerning the McLean mortgage and the giving by you to Henry Clapp and wife your opinion about them ever take place either in the presence of Fletcher D. Clapp or out of his presence?

(Objected to.)

Ans. None whatever; no conversation of such amount; I never saw any of the papers in the McLean case except the summons that was served upon me.

Inter. 68. Where did Henry Clapp live after this deed was made to you, the 1st of March, 1869?

Ans. He lived on the farm for a time, and I rented him a piece of land. It embraced a house, and he was to have the privilege of that.

718 Inter. 69. Under what arrangements, if any, did he continue to live on the farm and how long did he remain there?

Ans. I could not tell how long he remained there. The arrangement was, as I have said, that he looked after the renters, and as compensation I let him have this house and piece of land.

Inter. 70. What quantity of land, if you remember?

Ans. I can't remember what quantity; it embraced the orchard and buildings.

Inter. 71. State whether or not you know from what source was derived the means of support of the family of Henry Clapp after the date of his deed to you until he removed from that farm.

Ans. I don't know anything about it.

Inter. 72. Did you furnish or contribute to it?

Ans. That would be a pretty difficult question for me to answer, whether I have furnished it in part. I have dealt with the family rather loosely Sometimes when they were in want of money I have furnished it to them.

Inter. 73. Have you or not furnished him or his family with money or anything else since that deed was made to you in any way as or for a consideration for that deed; or, in other words, have you since the deed was made on account of it supported him or his family?

(Objected to.)

719 Ans. That involves two questions. One I must answer yes and the other no. With regard to whether I had furnished him any money since the deed was made, I must answer yes, be-

cause there was the Dr. Gardner executions & two to Mr. Truesdell and Mr. Tooker & the Lee Clapp claim I have furnished since the deed was made. With regard to furnishing him money for the support of his family I must say I have not, as a general thing; I have furnished him small amounts.

Inter. 74. State under what circumstances you have furnished him money, as you say, in small amounts since the deed was made, or what, if anything, has led you to do so.

Ans. Because he was in need of some money and I furnished it.

Inter. 75. State whether or not it is true that from the time the deed was made until he removed from the farm, whenever Henry Clapp or the family wanted anything, they came to you and told you and you would go to the markets and store and buy it and pay for it with monies from your own pocket.

(Objected to.)

Ans. I did go to the store frequently and buy things for them, and to the meat market, and pay for it out of my own pocket, but Mr. Clapp furnished me the money to pay for it.

Inter. 76. From what court did the execution of E. Lee Clapp *vs.* Ruggles W. Clapp, that you have spoken about, issue?

720 Ans. The circuit court in Dixon.

Inter. 77. Where did you pay it?

Ans. I paid it to Mr. Berkley, the sheriff of Lee county.

Inter. 78. From what court did the two executions in favor of Emmerson and the one in favor of Harriet Chase issue?

Ans. They issued in the justices' court at Amboy. I will also add that they were filed in the clerk's office in Dixon in order to become a claim upon the land.

Inter. 79. To whom did you pay those executions, if you remember?

Ans. I paid two of them, Emmerson's, to Mr. Truesdell. I paid Harriet Chase's to Mr. Tooker.

Inter. 80. Was the Dr. Gardner claim in judgment?

Ans. It was sued in the county court. I cannot say definitely who I paid it to, but I think I paid it to D. P. Gray, constable. My impression is I paid the principal to D. Gardner & the costs to Gray.

Inter. 81. In stating the amounts of these judgments and executions which you paid have you or not relied upon your memory, or have you refreshed it by reference to receipts, memoranda, or paper?

Ans. I have not refreshed my memory at all about it. It is now twelve years since I have looked at the figures. I was intending to look at the figures again before I signed these, and if I was mistaken to correct it.

721 Inter. 82. State whether or not, at the time you purchased this land, you knew that Edwin W. McLean or any one representing him claimed or pretended that the notes given by Ruggles W. Clapp to McLean were not satisfied.

(Objected to.)

Ans. I knew nothing of the notes except what Mr. Arnold told me about the mortgage, and he told me in a few words, and I did not believe him when he told me. That was after I bought, that he told me.

(Objected to as not responsive.)

Inter. 83. I refer to the time the deed was made by Henry Clapp to you. Did you then or before that know that McLean or any one for him claimed or pretended that the notes secured by that mortgage were not satisfied?

(Objected to.)

Ans. I did not know.

Inter. 84. Did you ever see any notes that purported or were said to be the notes by R. W. Clapp to Edwin W. McLean and secured by the mortgage referred to?

(Objected to as hearsay testimony.)

Ans. I did see the notes as referred to in the abstract, except one, which note Mr. Henry Clapp told me he saw paid.

Inter. 85. When did — see the notes you refer to?

Ans. I could not tell you when I saw them in Judge Eustace's office, except one, a small note of five hundred dollars.

722 Inter. 86. I mean when was the first time you saw them.

Ans. I believe that was the first time I saw them.

Inter. 87. State whether or not you have in your possession a deed made to you by Dwight Heaton, as master in chancery of the Lee county circuit court, conveying a part of the lands described in the McLean mortgage in controversy.

Ans. I have the possession of such a deed.

Inter. 88. State whether or not you are the same Lot Chadwick who was a party to the cause in chancery which is referred to in that deed?

Ans. I am.

Inter. 89. You will please produce that deed and identify it, that it may be annexed as an exhibit to your deposition.

Ans. This is the deed.

The witness here produced a paper, which is hereto attached and marked Exhibit "C" and made a part of this deposition.

(To the introduction of which deed in evidence counsel for complainants objects, because neither Edwin W. McLean nor any of the parties complainant were parties to the suit in chancery referred to in said deed and in pursuance of which it was made, and because said deed is otherwise incompetent.)

Examination was here adjourned until Tuesday morning, July 17th, 1883, at 8 o'clock a. m.

723 TUESDAY, *July 17th*—8 o'clock a. m.

Examination of LOT CHADWICK resumed:

Interrogatory 90. Please examine the writing now shown you,

which is marked Exhibit "A" to a deposition of Albert Z. Bodine, taken before Dwight Heaton, master in chancery of the Lee county circuit court, on the 22d of February, 1872, in a case wherein you were complainant and Edwin Clapp and others were defendants, which deposition is a part of the records of said Lee county circuit court and indorsed "Filed April 16th, 1872," and after examining it state whether you ever saw it before. If so, when for the first time.

(Objected to.)

Ans. (The witness was here shown the deposition referred to in the 90th interrogatory.) I am not able to read it this morning; my eyes water so that it blinds me.

Inter. 91. Do you know what has became of the deed which you say Henry Clapp and wife gave you for that land?

Ans. I delivered it into Judge Eustace's hands when he was employed by me as attorney in this case, as well as the Edwin Clapp case, and have not seen it since.

Inter. 92. Are you able to state from memory the several amounts of the notes held by you against Henry Clapp and surrendered in part consideration for this deed?

724 Ans. I can state from a memorandum that I have sketched down, but I think it is the amounts without the interest.

Inter. 93. State with the aid of any memorandum made by you, which you knew to be correct at the time it was made, the dates and amounts of those several notes.

(Objected to as leading.)

Ans. I made a memorandum at the time of the amounts, of the date of the amount, and the interest to the first day of March, 1869; that memorandum is mislaid or by some means gone. I cannot find it; don't recollect to have seen it for the last ten or twelve years.

(Objected to as not responsive.)

Inter. 94. State whether or not you have any memoranda of the dates and amounts of those several notes.

Ans. I have a sketch I put down in order to transfer into another book.

Inter. 95. Have you the other book?

Ans. That, I have stated, is mislaid, lost, or otherwise gone.

Inter. 96. Was your testimony as a witness in this case ever in part taken before the examiner?

Ans. It was.

Inter. 97. At that time did you or not testify in reference to the dates and amounts of these several notes?

(Objected to, the records of such examination being the best evidence.)

Ans. I did; I think I did.

725 Inter. 98. Did you or not at that time in that testimony state their dates and amounts correctly?

(Objected to as leading.)

Ans. I did state the dates and amounts correctly, because I had the memoranda of the dates and amounts and the interest before me.

(Objected to as to all after the word correctly.)

Inter. 99. From the sketch or memoranda which you have, can you or not state the dates or amounts of said notes?

(Objected to.)

Ans. I can state the amounts of the notes, but I am not certain that the interest is added and am not certain that it is not.

Inter. 100. If, in answer to a question that was asked you when a portion of your testimony was taken before the examiner in this case, as before referred to, you stated this, in reference to the date and amount of said notes: I held five notes against Henry Clapp, one dated October 15th, 1866—the note, with the interest accumulated on the 1st of March, 1869, amounted to $1,875.25; one note dated March 1st, 1867, note and interest amounted to $48.00; one note June 1st, 1868, $326.80; one note December 20, 1867, $3,531.21; January 1st, 1869, $254.17; these amounts embrace the face of the notes with interest added to March 1st, 1869; the total amount is $6,035.43, was your answer, or not, correct?

726 (Objected to as leading and otherwise incompetent.)

Ans. It was correct.

Inter. 101. Perhaps now you can use your eyes sufficiently to be able to examine the paper shown you where interrogatory 90 was asked? If you can, please do so and state whether you ever saw it before and when and where you first saw it and what paper it is.

Ans. (Witness here examined a paper attached to the deposition, mentioned in Inter. 90.) Yes, sir; I saw this paper before this. It was made by Esq. Bodine, by Henry Clapp and his wife; the deed was executed by them and delivered to me. I first saw it, in this house, in the adjoining room, on the 1st day of March, 1869. It is a deed of the land lying in Bradford, which is township 21 north, range 11 east, of 4th P. M.

Inter. 102. State whether or not that is the deed which you say was given to you by Henry Clapp and wife on the 1st of March, 1869, for the land involved in the McLean mortgage in controversy in this suit.

Ans. It is.

727 Cross-examination:

Cross-interrogatory 1st. We are taking your deposition at your residence, in Lee Center, are we not?

Ans. Yes, sir.

Cross-inter. 2. How long have you lived in this building?

Ans. Since 1855.

Cross-inter. 3. From what place or locality did you remove to this house?

Ans. I don't know how to describe it; it was from Amboy.

Cross-inter. 4. In what business had you been there engaged?

Ans. At farming.

Cross-inter. 5. On what farm?

Ans. On a farm since owned by Martin Wright.

Cross-inter. 6. Did you own it and how large was the farm?

Ans. I owned it. There was about one hundred and fifty-odd acres.

Cross-inter. 7. Where were you living when you sold it and to whom did you sell it?

(Objected to as immaterial.)

Ans. I lived on the farm; sold it to Edward Hagerty.

Cross-inter. 8. For how much?

(Objected to.)

Ans. For five thousand dollars.

Cross-inter. 9. When did you sell it to him and how and when did he pay you for it?

(Objected to.)

728 Ans. I sold it to him in 1855. He paid me two thousand five hundred down in gold; gave his notes and a mortgage for the remainder. That mortgage passed through Horace Preston's hands. He had it for a time; then O. M. Wright. It was transferred to him and from him to Martin Wright. The Wrights paid in the money. I don't know which one it was; they both come together.

Cross-inter. 10. What other property or means had you at the time you sold the farm?

(Objected to.)

Ans. I had cattle, horses, hogs.

Cross-inter. 11. Anything else; if so, what?

(Objected to.)

Ans. I had other personal property. I had the previous year's crop of corn.

Cross-inter. 12. Did you sell off all but your household effects?

(Objected to.)

Ans. Except a couple of cows.

Cross-inter. 13. What were you worth in 1865?

(Objected to.)

Ans. I could not tell you; but I was worth a very considerable sum.

Cross-inter. 14. Can you state what you were worth in 1868 or 1869?

(Objected to.)

Ans. I could not, without going into a very considerable detail, and I don't feel competent now to exercise my mind sufficient to do that; if I did it would disqualify me from testifying.

729 Cross-inter. 15. Can you not state, approximately, what you were worth at the dates last mentioned?

(Objected to.)

Ans. It would be very difficult for me. It consisted in lands in Iowa and in Wisconsin, United States bonds, Lee county bonds, and promissory notes from various individuals; that is all I think of at present.

Cross-inter. 16. Can you state in what county and section in Iowa the lands were and how many acres?

(Objected to.)

Ans. I had forty acres in Fayette county; timbered land. I had 80 acres in Adams township, Delaware county. I had 200 acres also in another tract in Adams township.

Cross-inter. 17. If you have sold any of this land state when you sold it and for how much.

(Objected to.)

Ans. I sold the land in Bremer county in five and ten acre lots; do not recollect how much I sold it for. I sold 80 acres in Delaware county; don't remember how much I sold it for. I sold the two hundred acres in Delaware county last year for four thousand dollars. I cannot tell when I sold the others; it was long years ago & I did not charge my mind with it.

Cross-inter. 18. Was it before or after 1869?

(Objected to.)

730 Ans. I sold the other tracts before 1869, quite a number of years.

Cross-inter. 19. Can you state in what county and the number of acres of the Wisconsin land?

Objected to.

Ans. It was in Marathon county; one hundred and sixty acres.

Cross-inter. 20. When and for how much, if at all, did you sell this tract?

Ans. I have not sold it.

Cross-inter. 21. What was the largest amount of Government bonds owned by you in 1868?

(Objected to.)

Ans. I can't tell you.

Cross-inter. 22. Can you give us any idea of the amount?

(Objected to.)

Ans. I can't tell you the amount. I was then shut up in the post

office like a prison attending to the business and selling some goods, and it engrossed my attention entirely, and I don't recollect the amount of bonds. I sold some bonds that I can recollect. I sold one thousand dollars to Henry Clapp and eight hundred to Lewis Clapp. I sold six hundred to the Dixon National Bank to pay up the bank stock there. I sold some to Mrs. Haskell; I can't say how many. I guess I sold at different times. I sold some to Mrs. Crombie, her daughter. I sold to various other individuals; I can't tell who or when. I was in the post office at the time busily en-
731 gaged, as I said before. People came in. I bought the bonds of them and sold them out as I had occasion.

Cross-inter. 23. Did you buy and sell Lee county bonds in the same way?

(Objected to.)

Ans. I did.

Cross-inter. 24. Can you say for what purpose these Lee county bonds were issued?

(Objected to.)

Ans. I think they were issued for a bounty for soldiers that were ordered drafted from this county, and they gave a bounty of, I believe, *of* a thousand dollars for them to volunteer.

Cross-inter. 25. Were the Lee county bonds you say you gave Henry Clapp, in the consideration for the deed referred to from himself and wife to you, of this class or issue?

Ans. They were.

Cross-inter. 26. Were you borrowing or loaning money from 1866 to 1869?

Ans. I was doing both.

Cross-inter. 27. Borrowing for what purpose?

Ans. Borrowing for the purpose of loaning.

Cross-inter. 28. Loaning in what way and on what security?

Ans. I was loaning to individuals that were responsible, principally without security.

Cross-inter. 29. Of whom did you borrow for that purpose?

(Objected to.)

732 Ans. I borrowed from a cousin of mine, Corydon Chadwick; a man by the name of Robert Gardner. I don't now recollect of any others; in fact, need not try to recollect any others.

Cross-inter. 30. Did you loan any of your own money?

Ans. I did loan of my own money.

Cross-inter. 31. How much did you have loaned out of your own at any one time?

Ans. I can't tell you.

Cross-inter. 32. Can you say to whom?

Ans. I loaned to John H. Shaw, Thomas Nicholson, to Dr. Gardner, to Ira Brewer, to James Phillips, to William Phillips, and to various other persons.

Cross-inter. 33. How much did you borrow from your cousin in all?

(Objected to.)

Ans. I could not tell you now.

Cross-inter. 34. Have you paid him up?

(Objected to.)

Ans. I have.

Cross-inter. 35. When did you do so?

(Objected to.)

Ans. I don't recollect.

Cross-inter. 36. Can't you state the year?

(Objected to.)

Ans. I don't recollect the year. I recollect I purchased a draft & sent it to him.

Cross-inter. 37. Was it before or after 1868?

(Objected to.)

Ans. I should say it was after. It must have been after that.

733 Cross-inter. 38. How long were you postmaster, and from what year?

Ans. From April, 1861, until, I think, October or November, 1868.

Cross-inter. 39. When did you first make the acquaintance of Henry Clapp?

Ans. I can't tell you. I should have to go a great ways back for that.

Cross-inter. 40. When did he marry your daughter?

Ans. I am not certain whether it was in 1866 or 1867.

Cross-inter. 41. Where was he living at the time and in what business, if any, engaged?

Ans. He was living in Lee Centre in a house that belonged to Oliver C. Barker. I knew of no other business he was engaged in except attending to his farm.

Cross-inter. 42. How much of the farm was there under cultivation?

Ans. I should think about three hundred and eighty acres.

Cross-inter. 43. How long did that continue to be his only business?

Ans. Until he sold the farm to me, I suppose. I don't know of any other business he had.

Cross-inter. 44. Did he live on the farm from the date of his marriage to your daughter until you took it?

Ans. He moved the house that he lived in, purchased it of O. C. Parker, moved it onto the farm. I loaned him the money to

734 move the house onto the farm March 1st, 1867. He commenced living there a few days after that transaction; con-

tinued living there until after the house was burned down. I can't tell what year that was.

Cross-inter. 45. Was it before or after you took the farm?

Ans. It was both before and after.

Cross-inter. 46. Who composed his family during that time?

Ans. Well, I don't remember definitely. There was himself and wife and Fletcher Clapp.

Cross-inter. 47. Were you keeping house in this building during those years?

Ans. Yes, sir; I have kept house here from 1855 up to the present time.

Cross-inter. 48. Is your wife still living?

Ans. Yes.

Cross-inter. 49. Was it not common for Henry, his wife, and Fletcher to visit you often from 1866 to 1869?

Ans. They did visit frequently, principally on business, to get store goods, the butcher shop to get meat, etc.; but when Fletcher came it was mostly with Mrs. Clapp when she came down alone.

Cross-inter. 50. How did you come to fix the price of the farm at ten thousand dollars and no more?

Ans. Because the title was embarrassed. To remove the cloud from the title has cost me at least five thousand dollars. I
735 anticipated some more of this kind when I bought; therefore I paid a price, leaving a margin sufficient to pay the cost of that suit which has already closed, which suit was to recover a new deed or to obtain a new deed in place of one which was abstracted from the recorder's office and conveyed to Edwin Clapp and mutilated by some person unknown to me.

(Second sentence objected to as not responsive.)

The further examination of this witness was here postponed by agreement on account of the fatigue and physical indisposition of the witness, who asks for the postponement as a favor on that account.

JULY 17TH, 1883.

Examination of witnesses on the part of the defendants was adjourned by agreement until Monday, July 30th, 1883, at 9 o'clock a. m.

JULY 30TH, 1883—9 o'clock a. m.

Examination of LOT CHADWICK resumed:

Cross-inter. 51. When did you first learn of the existence of the two deeds from Jason and Edwin Clapp and their wives to R. W. Clapp involved in the suit of Edwin Clapp against you, to which you have referred?

(Objected to as not cross-examination and immaterial.)

736 Ans. I don't recollect when. Mr. Henry Clapp told me of the deeds, which was the only knowledge I had of them until the commencement of this suit—I mean the suit I commenced to obtain a deed.

Cross-inter. 52. Was it before or after your purchase from Henry Clapp that he first told you about those deeds?

(Objected to as not proper cross-examination and immaterial.)

Ans. It was before or at the time of the purchase.

Cross-inter. 53. Can you not tell which it was?

Ans. No, sir.

Cross-inter. 54. Do you remember of Henry and his wife going East to obtain a deed from Ruggles W. Clapp of a portion of the land involved in this suit?

(Objected to.)

Ans. I do remember of their going East, and they said that they obtained a deed from him.

Cross-inter. 55. Did they tell you so on their return?

(Objected to.)

Ans. I cannot recollect when they told me so.

Cross-inter. 56. Did they show you the deed or did you see it?

Ans. I don't remember.

Cross-inter. 57. Did you know at the time what tracts it conveyed?

(Objected to as not proper cross-examination and too indefinite to be understood or answered.)

Ans. I think I did, from the abstract of the record.

737 Cross-inter. 58. When and where did you see the abstract you refer to?

Ans. I saw the abstract here in my house. I can't tell you when I first saw it.

Cross-inter. 59. Do you refer to the abstract which Mr. Arnold brought to your house and of which you caused a copy to — made?

(Objected to because it assumes as a fact that which did not occur.)

Ans. No, sir.

Cross-inter. 60. What abstract, then, do you refer to?

Ans. I refer to a general abstract of the title from the time the land was entered at the Government land office to the present time, except a deed made by the master in chancery by the order of the court, which was not yet entered upon the abstract.

Cross-inter. 61. Did you see this abstract before your purchase from Henry Clapp of the land involved in this case?

Ans. I did see it.

Cross-inter. 62. In your answer to the 31st direct interrogatory you said: "I think it likely I did say something about an abstract that Arnold had in his possession." Did you then mean the same abstract to which you refer in the answer you have just made?

Ans. I did not.

Cross-inter. 63. Which one of these two abstracts did you see first?

Ans. I can't recollect.

738 Cross-inter. 64. Can you not remember whether the abstract brought by Mr. Arnold, to which reference has been made,

was or was not the first source of knowledge you acquired as to the condition of the title to the land involved in this case?

Ans. I did not see the abstract brought by Mr. Arnold, but read a copy of it made by Mrs. Clapp.

Cross-inter. 65. Was it from that copy that you first learned the condition of the title referred to?

Ans. I don't remember.

Cross-inter. 66. Had you talked with Henry Clapp any about the title prior to your reading this copy you refer to?

Ans. I don't remember.

Cross-inter. 67. Who made the abstract referred to in your answer to the 61st cross-interrogatory?

Ans. I can't tell who made the abstract. Mr. Clapp obtained the first abstract up to a certain date, on the 3d day of March, 1869. I had the abstract completed to that date by Mr. Ball, deputy recorder.

Cross-inter. 68. Have you that abstract in your possession; if so, will you permit me to examine it?

Ans. I have it not in my possession. I sent it through the mail to Mr. Dixon.

Cross-inter. 69. Did you keep any books of account from 1865 to the present showing any of your transactions with persons you were dealing with during that time?

739 (Objected to as immaterial and not proper cross-examination.)

Ans. Nothing, except minutes that I kept for the time being.

Cross-inter. 70. Were these minutes kept in any book or books?

(Objected to for same reasons as Inter. 69.)

Ans. A minute book; a small one; and when they were settled I cast the book aside.

Cross-inter. 71. Have you any of these minute books now?

Ans. I don't know that I have. I have had no dealings that required an account for a long time. If I bought anything I paid for it at the time.

Cross-inter. 72. How many of those books did you have or use from 1865 to the present time?

(Objected to.)

Ans. Not many.

Cross-inter. 73. Did you have or keep more than one from the time you ceased to be postmaster to the present?

(Objected to as immaterial.)

Ans. I could not say as to that.

Cross-inter. 74. How long have you used the book now before you?

(Objected to as immaterial & not proper cross-examination.)

Ans. I have not used it much any way. There is a few charges

and minutes of grain in it. I believe it is dated in 1869.
740 There is no accounts in it that are intelligible in it; just a few minutes to refresh my recollection.

Cross-inter. 75. Do you remember having or using any other account book than this one since 1868?

(Objected to as immaterial.)

Ans. I don't remember whether I have or not. I suppose I have, simply as a minute book.

Cross-inter. 76. Did you keep any minute at the time showing any part of the transaction of Henry Clapp relating to the purchase by you of the farm involved in this suit?

Ans. I have kept no account with Henry Clapp at all.

Cross-inter. 77. Have you kept any minutes or memoranda of account with him?

Ans. I have kept no minutes or memoranda of accounts with him, because I have had no dealings with him except some small matters that were settled up shortly afterward.

Cross-inter. 78. Did you keep any memoranda of bonds bought and disposed of by you?

(Objected to as immaterial.)

Ans. None at all.

Cross-inter. 79. Did you of money borrowed and loaned?

(Objected to as immaterial.)

Ans. None whatever. I simply, if I loaned money, took a note; if I borrowed I gave a note.

741 Cross-inter. 80. Did you make no minute of the date and amount of the notes you gave?

(Objected to as immaterial.)

Ans. None.

Cross-inter. 81. While selling goods in connection with the post office you sold some on credit, did you not?

(Objected to as immaterial and not proper cross-examination.)

Ans. I sold some on credit.

Cross-inter. 82. Did you not keep any books for that purpose?

(Objected to as immaterial and not proper cross-examination.)

Ans. I did keep a book made up of paper with goods charged upon it. When the goods were paid for and the book was no longer valuable I burned it.

Cross-inter. 83. Did you keep any account as postmaster?

(Objected to as immaterial.)

Ans. I did.

Cross-inter. 84. How did you keep that?

(Objected to as immaterial.)

Ans. I kept it on a book and on blanks that were furnished me.

Cross-inter. 85. Did you keep no account with Corydon Chadwick and Robert Gardner?

Ans. No account. I gave them my note.

Cross-inter. 86. Did you give them your note more than once; if so, how many times?

742 Ans. I can't recollect now how many times.

Cross-inter. 87. When did you commence borrowing of them?

Ans. I should think it was in 1865 or 1866.

Cross-inter. 88. Have you in your possession any letters from them to you?

(Objected to as immaterial.)

Ans. I don't think I have. Old letters that are of no consequence I gather them up once in awhile and burn them.

Cross-inter. 89. Did you have any bonds left after, as you say, turning those over to Henry Clapp in part payment for the farm?

Ans. I did have bonds left. I remember that I sold to Lewis Clapp the next day $800.00 in bonds, and to others.

Cross-inter. 90. Can you recall any others?

Ans. I sold some to my daughter, Mrs. Martha Crombie, and I sold some, I think, to Mrs. Haskell.

Cross-inter. 91. Do you remember whether any of the bonds you so disposed of were pas*s*ed due?

Ans. They were not pas*s*ed due.

Cross-inter. 92. What kind of bonds were they?

Ans. I sold to Lewis Clapp Lee county bonds, for which he paid me the face of the bonds and the accrued interest. I think I sold Mrs. Crombie five-twenty bonds, but am not sure.

743 Cross-inter. 93. Where did you keep your bonds and papers in 1868 & '9?

Ans. I kept them sometimes in my secretary, sometimes in a small trunk that I have, and sometimes in Mrs. Haskell's safe.

Cross-inter. 94. When did you commence putting papers in her safe?

(Objected to as immaterial.)

Ans. I can't tell you.

Cross-inter. 95. About what year?

(Objected to.)

Ans. I could not state anything near the time, probably. It would be no use to try to state.

Cross-inter. 96. Do you remember distinctly all that transpired when Henry Clapp delivered the deed of the premises involved and you produced notes, bonds, etc., as you have stated?

Ans. I do remember distinctly.

Cross-inter. 97. Relate everything that transpired on that occasion in the order in which it took place.

Ans. Well, Esquire Bodine came over to make the deed, or to execute it; I am not certain which. He executed the deed, after

which I paid to Henry Clapp one thousand dollars in Lee county bonds and Sherman Shaw's note for one thousand dollars and the accrued interest; passed the bonds and note to Albert Z. Bodine to take note of them and to count them. I then passed the
744 bond and notes into Mr. Clapp's hands. That ended the transaction. He delivered me the deed in exchange for them.

Cross-inter. 98. Who figured up the amount of interest due on the note and bonds?

Ans. I figured it up roughly at the time; stated the amount a little less than it was; some ten dollars, I think.

Cross-inter. 99. Why did not Henry Clapp figure the interest?

Ans. I don't know. I don't know but he did.

Cross-inter. 100. What rate of interest did these bonds bear?

Ans. Ten per cent. interest, payable annually.

Cross-inter. 101. How much interest was due or had accrued on the Shaw note?

Ans. It was then about 4 months to the time interest was payable. I think there was about eight months' interest on it.

Cross-inter. 102. Had you any particular reason for calling Mr. Bodine to witness the transfer? If so, what was your reason?

Ans. The reason was that where I formerly lived and in transactions there it was always customary to pay something down and to call evidence of it. That was the legal practice, and I called him to witness the transaction simply from habit.

Cross-inter. 103. I understand you to say in substance that you did not think of buying the farm of Henry Clapp until a day
745 or two before the deed was executed. Is that the fact?

Ans. That is the fact.

Cross-inter. 104. What was the bargain between you in pursuance of which the deed was made?

Ans. I was to take up all the claims that were against the place, to pay certain other debts, and to pay him two thousand one hundred and fifty dollars and to give him up five promissory notes which I held against him, amounting with interest to six thousand and thirty-five dollars. I believe I stated the other day it was twenty-five, but it was a mistake of mine. I want that corrected.

Cross-inter. 105. How did it happen that you were to pay him just twenty-one hundred and fifty dollars and not more or less than that?

Ans. Because there was about that amount due him as estimated, and I paid it to him.

Cross-inter. 106. In what manner was this sum to be paid as first agreed between you?

Ans. I agreed to pay him in the demands which I gave him in the Lee county bonds and the Sherman Shaw note.

Cross-inter. 107. How much were you to pay Trobridge?

Ans. It was one hundred and seventy-odd dollars—$177\frac{39}{100}$.

Cross-inter. 108. Did you agree to that amount at the time you made your bargain with Henry?

746 Ans. I think I did. At any rate I agreed to pay the debt to Trobridge.

Cross-inter. 109. But Henry did not owe that amount to Trobridge at the time, did he?

Ans. Yes, sir; I suppose so. Trobridge's account showed that amount due. I believe I paid him a portion of it before that time and a portion of it shortly after.

Cross-inter. 110. Had the debt to Trobridge all been contracted at the time of your bargain with Henry for the land?

Ans. It had been.

Cross-inter. 111. If in your deposition in the case of Edwin Clapp against you, to which reference has been made, you, in 1872, stated, "I paid Sabin Trobridge one hundred and seventy-seven dollars and thirty-nine cents for a store debt from Henry Clapp, part of which was due and part of which was to be traded out," at which time were you right—then or now?

Ans. I could not say, but I think that was Judge Eustace's language and not mine when I testified before.

Cross-inter. 112. Do you remember now how much, if any, was still to be traded out?

Ans. I don't remember anything about anything to be traded out. I simply remember that I had a promissory note against Mr. Trobridge that was past due for money lent, and I indorsed that
747 amount on the note. Whether it was all at once or not I could not tell, or at different times; in fact, I do not know as it was all indorsed upon the note or not. If not, I paid him the money.

Cross-inter. 113. Did you pay the taxes after the deed was made to you or before?

Ans. After.

Cross-inter. 114. Who first spoke of the land being conveyed to you—yourself or Henry Clapp?

Ans. I don't remember. Mr. Clapp said the land was advertised for sheriff's sale under Lee Clapp'- execution.

Cross-inter. 115. What was the conversation between you on the subject I refer to the day or two before the deed was made?

Ans. The conversation was that the land was advertised for sale and he owed me the six thousand and thirty-five dollars—the notes past due. I told him under the circumstances I would take the land and pay the claims.

Cross-inter. 116. Did he ask you to take the land on those terms?

Ans. I don't know whether he asked me or whether I proposed the matter—to take it on those terms.

Cross-inter. 117. Did you then figure up the amount of those claims?

Ans. We estimated them.

Cross-inter. 118. At how much?

748 Ans. At ten thousand dollars, including the two thousand one hundred and fifty that I was to pay him.

Cross-inter. 119. I want to know at what amount you estimated the claims against the land and nothing else.

Ans. Well, Lee Clapp's claim at $760.80; Truesdell'- claim was $244.28; Tooker's was $125.12; taxes, $200.00 for one year. It had

been sold and taxes doubled up. Taxes again, $170.80. That was amount of claims there was against the land, I believe.

Cross-inter. 120. These were paid after the deed was made, were they not?

Ans. Yes, sir.

Cross-inter. 121. What I desire to know is not what you in fact paid, but the amount as a total you estimated in making the bargain, the claims against the land would come to.

Ans. We estimated that the claims and all, together with what I was to pay him, amounted to ten thousand dollars.

Cross-inter. 122. Please answer my last question directly, if you can.

Ans. We estimated the claims against the land, together with certain debts of his, and all amounted to ten thousand dollars; but when I paid them I found they amounted to ten thousand & seventy-three dollars & ninety-seven cents.

Cross-inter. 123. Are you unable to state as an independ-
749 ent fact at what sum you estimated the claims against the land?

Ans. I am not able to state, only I can give each claim.

Cross-inter. 124. When you made the bargain with Henry Clapp had you ascertained the amount of each claim?

Ans. He gave me the claims as nearly as he could.

Cross-inter. 125. Did you rely on his statements in relation thereto or did you examine for yourself?

Ans. I relied on his statement in part and I examined in part to see how it stood.

Cross-inter. 126. Where and as to what did you examine?

Ans. I examined the recorder's office and ascertained the claims that was there against the land. I should add the court records. I examined into the case of Lee Clapp with the sheriff. I examined into the recorder's office and the circuit clerk's office, and also the treasurer's office to see what taxes was against it. This was on the day that the deed was recorded, but before it was recorded.

Cross-inter. 127. Had you before this examination delivered Henry's five notes to him?

Ans. Yes, sir.

Cross-inter. 128. Why did you examine the records before filing the deed for record?

Ans. Because if I find anything that was important out of the way I could go back on the proceeding and not have it filed for record.

750 Cross-inter. 129. Did you have the abstract extended by Mr. Ball, as stated by you, on the same day you made the examination referred to?

Ans. I did.

Cross-inter. 130. If, in your deposition in the case of Edwin Clapp against yourself, already referred to, you stated that the notes and money were delivered on the 1st day of March, 1869, were you right then as to the payment of money?

(Objected to as immaterial and as embodying a misstatement of witness' testimony in said Edwin Clapp case.)

Ans. I did not pay any money. That was a mistake. If it is taken from the record it is a mistake, because I said always that I paid him two thousand one hundred and fifty dollars in Sherman Shaw's note and Lee county bonds.

Cross-inter. 131. I have before me your deposition in the case referred to, purporting to be subscribed and sworn to by you, the signature to which I now show you. Please state whether you signed it.

(Objected to unless the witness is permitted, if he desires, to examine the entire paper before answering as to his signature.)

Counsel for complainant interposes no objection whatever
751 to the witness examining the paper sufficiently to determine whether it is his signature that is appended thereto or not.

Ans. That is my signature, but I certainly never made that statement that I paid him money on that.

Cross-inter. 132. In answer to the 8th direct interrogatory of the deposition referred to it is written as follows: "The notes and money were delivered on the 1st day of March, 1869, at my house. The money was paid in presence of A. C. Boudine. The payment was not all in money. A part was in Lee county bonds. I think more than one thousand dollars was in Lee county bonds. I cannot state what the other bonds were." If you so stated on the examination, when your said deposition was taken, did you state the truth on the subject embraced in said answer?

(Objected to unless in the same connection the attention of the witness is called to the explanation which he gave of that matter and which is a part of the deposition referred to.)

Ans. That is a pretty difficult question for me to answer. The amount of it is, it is not what I stated. My statement was that I paid one thousand dollars in Sherman Shaw's note and one thousand dollars in Lee county bonds and six thousand and thirty-five dollars and forty-three cents in Henry Clapp's notes that were part due. That was the day when the deed was passed.

752 Cross-inter. 133. The deposition from which I quoted and to which you have acknowledged your signature was subscribed and sworn to February tenth, 1872. You were asked in the 9th direct interrogatory thereof, "Tell as near as you can how much you paid to Henry Clapp in money, how much in Lee county bonds, and how much in other bonds, the denominations of such other bonds, and by what authority issued," to which you answered, "I cannot tell you how much. I don't remember how much money. I cannot tell how much in Lee county bonds. I called A. C. Bodine to witness the transaction and dismissed it from my memory. I cannot tell how much in other bonds. I don't remember the denomination. I don't remember to state by what authority the other bonds were issued. I had been paying out prior to that a pretty large amount of bonds, some county bonds and some five-twenties, conse-

quently I am at a loss to state as to these." Why did you so state if in fact you paid Henry Clapp no money and no other bonds than Lee county bonds on his delivering the deed to you?

(Objected to because unfair to the witness, for the reason that in the deposition referred to after giving the testimony quoted in this question the witness stated as follows: "I delivered to him when the deed was made one thousand dollars in Lee county bonds, there being ten of them of one hundred dollars each. The other bonds which I delivered to him at a former period, I think, were all
753 United States five-twenty bonds." And being asked another question, as follows: "At the time of the delivery of the deed did you give Henry Clapp any other bonds in addition to the ten Lee county bonds that you have spoken about," and to which question the answer written is, "I did not. I gave him one promissory note which I then held signed by Sherman Shaw and Son & Co., which note I bought of him, Henry Clapp, about three or four months afterwards; paid him the money for it. These notes and bonds, with the accumulated interest, on the 1st day of March, 1869, amounted to about $2,150. I would like to explain in reference to this when I answered questions in reference to these day before yesterday I was excessively wearied and troubled with a difficulty in the spine which affected my head so that I mistook another transaction for the one in question; have since refreshed my recollections and now state as above.").

Counsel for complainants here calls attention to the fact that the matters set forth in the objection of counsel is quoted from the cross-examination of the witness conducted by his then counsel, being cross-interrogatories 4 & 5 and answers thereto, and that in the 3d cross-interrogatory the witness was asked, "Are you now able to tell how much of the payment which you state was made to Henry Clapp in money and bonds was money?" to which the answer is written,
754 "I am not able to state."

Ans. I corrected in that paper which purports to be the abstract of my testimony. I said that I mistook the transaction, and in correcting it said that I paid him one thousand dollars in Lee county bonds and Sherman Shaw & Son & Co.'s note of hand for one thousand dollars.

Cross-inter. 134. Had you bought any other land of Henry Clapp prior to the taking of your deposition from which I have just quoted and to which you refer in your answer?

Ans. No, sir; no other.

Cross-inter. 135. Had he delivered to you any other deed for which you gave him money or bonds?

Ans. I bought no land of him beside this tract of land in question.

Cross-inter. 136. By the 7th direct interrogatory of your deposition just quoted from you were asked, "What did you give to Henry Clapp or his wife in exchange for said deed, if anything, and to which did you give it?" I ask you now to what deed that question referred?

(Objected to because the deposition itself is the best evidence and the witness may not know.)

Ans. I suppose that it referred to the deed that is in question, as I have had no other from him.

Cross-inter. 137. Did you indorse to Henry Clapp either the bonds or the Shaw note?

755 Ans. No, sir.

Cross-inter. 138. The Shaw note came back to you and was paid to you, was it not?

Ans. It was not paid to me but in part.

Cross-inter. 139. To whom was the other part paid?

Ans. Paid to Mrs. Haskell. The fact was simply this: I considered Mr. Shaw did me a favor in keeping the money so long as he did, and he wished to pay me a portion of the note—I think about six hundred dollars. I could not use the six hundred so well as I could the whole face of the note and interest, and sold it to Mrs. Haskell for the money.

Cross-inter. 140. How soon after passing it to Henry did you get it back from him?

Ans. I don't recollect; it was perhaps two or three months, perhaps four.

Cross-inter. 141. How did you happen to get this Shaw note back from Henry Clapp?

Ans. Because there was a difficulty between Mr. Shaw's family and Mr. Clapp. In consequence of that difficulty he was unwilling to keep and collect the note.

Cross-inter. 142. How did you pay him for it, if at all?

Ans. I paid him the money.

Cross-inter. 143. In whose presence?

Ans. I don't know that there was anybody present—don't remember.

Cross-inter. 144. Do you know what use Henry made of the money?

(Objected to as immaterial.)

756 Ans. I don't.

Cross-inter. 145. Was his wife present when you paid it?

Ans. I think she was, but am not certain. She might have been, and she might not.

Cross-inter. 146. Had Henry Clapp paid you any money within three or four months prior to your taking this Shaw note back?

Ans. I am not aware that he had; don't think he did.

Cross-inter. 147. What was the amount of the first note Henry Clapp gave you?

Ans. I shall have to look and see what that was.

(Witness here consulted a memorandum book.)

$1,875.25. That includes the interest to March 1st, 1869.

Cross-inter. 148. When was that note given?

Ans. I can't see to read it. October 15th, 1867.

Cross-inter. 149. Had your daughter been married to Henry Clapp at the date of this note?

Ans. I don't know. I don't recollect when she was married.

Cross-inter. 150. Did Henry Clapp ever pay you any interest on it?

Ans. I don't think he did.

Cross-inter. 151. Was it- payment secured in any way?

Ans. It was not.

757 Cross-inter. 152. Did you make any enquiry before letting him have the money as to his standing and ability to pay?

Ans. I depended on the farm. I believed that he owned it; had reason to believe so, although the title was in other hands.

Cross-inter. 153. Why did you not require a mortgage to secure you?

Ans. Because the land was under cover to secure it from his creditors, and I believed that he would pay it; presumed that I could get it through the land if he did not pay it.

Cross-inter. 154. What was the date and amount of the second note he gave you?

Ans. It was March 1st, 1867, $48, with the interest to March 1st, 1869.

Cross-inter. 155. Did he ever pay you any interest on the note for $326.80, dated June 1st, 1867?

Ans. I don't know as he did. I don't think he did.

Cross-inter. 156. Did he pay you interest on any of the notes he gave you?

Ans. I don't think that he did pay me the interest on any of them. I have no recollection of his ever paying me the interest.

Cross-inter. 157. Did you ever ask him for interest on any of these notes?

Ans. I presume I did not. The notes were not given with interest payable annually.

Cross-inter. 158. How and when was the interest payable?

Ans. It was payable when the note was collected.

758 Cross-inter. 159. How long was any of these notes to run?

Ans. I don't recollect the time that the notes were to be paid.

Cross-inter. 160. When you took the note dated December 20th, 1867, for $3,531 $\frac{21}{100}$, or which amounted to that sum March 1st, 1869, did you take any security?

Ans. I did not take any security.

Cross-inter. 161. Where was Henry Clapp living at the date of this note?

Ans. I think he was living in Lee Center.

Cross-inter. 162. What was his credit in the neighborhood, if you know?

(Objected to as immaterial.)

Ans. I don't know anything about the neighborhood. His credit was not very good, I should think, at that time. His credit was not good because his land was held by others in trust, which I sup-

posed I could reach, as I did reach it, through a course of law, if necessary.

Cross-inter. 163. Did Henry Clapp tell you for what purpose he wanted the money for which you say this note dated Dec. 20th, 1867, was given?

Ans. He did not tell me as I remember of. He might have told me; might not.

Cross-inter. 164. Do you know what use he made of it?

Ans. I don't know what use he made of it. I supposed he wanted it to buy land with; but I don't know whether he bought it or not.

759 Cross-inter. 165. Did you pay him the money on this note all at one time?

Ans. I paid him the money and bonds on it, or all money; I can't tell which; all at one time.

Cross-inter. 166. Is it not true that Henry Clapp was very dissipated at or about the date of the last-mentioned note?

Ans. I don't remember. He was in the habit of drinking, but I don't remember at what time.

Cross-inter. 167. Was it to an extent to affect his business qualifications?

Ans. When he was drinking it was; when he was sober it was not.

Cross-inter. 168. Did you make any inquiry from him or any one else as to whether he bought land with the money you loaned him or not?

(Objected to as immaterial.)

Ans. I did not make any inquiry for the reason that the whole Clapp family would have been after — like a flock of chickens after one that had caught a bug if they knew he had any property.

Cross-inter. 169. Henry Clapp and wife are living in a small house in the same inclosure as yours, are they not?

Ans. It is much the same as mine is.

Cross-inter. 170. Who owns the house he lives in, if you know?

(Objected to.)

Ans. Mrs. Haskell.

Cross-inter. 171. How long has he lived there?

(Objected to.)

760 Ans. It was a year last March since he moved there, I think.

Cross-inter. 172. When, as you say, you paid Henry Clapp in bonds and the Shaw note, twenty-one hundred and fifty dollars, do you know of his having any other property or means?

(Objected to as immaterial.)

Ans. Well, he had the farm, and was having it worked and receiving some fifteen or eighteen hundred dollars a year as the income from it.

Examination adjourned until 8 o'clock to-morrow morning, July 31st, 1883.

TUESDAY, *July* 31*st*, 1883—8 o'clock a. m.

All the foregoing testimony was here read over to the witness by the examiner, and the corrections made by the witness are appended to this deposition.

Cross-examination resumed:

Cross-interrogatory 173. When did your daughter, Mrs. Clapp, commence depositing money with you for safe keeping?

Ans. When she went West.

Cross-inter. 174. What year was that?

Ans. I don't remember what year it was.

Cross-inter. 175. State, as near as you can, what year it was.

761 Ans. Well, with regard to their going West, I have not the most definite recollection. My recollection is poorly, and I can recollect most anything better than dates.

Cross-inter. 176. Up to what time did you continue to keep her money for her?

Ans. I don't remember.

Cross-inter. 177. How much of her money did you have at any one time for safe keeping?

Ans. I don't know. She delivered me a package of money. I did not count it, and she drew upon it as occasion required.

Cross-inter. 178. From what source did she obtain this money, if you know?

Ans. I don't know anything about it.

Cross-inter. 179. Were there any bonds in the package you refer to?

Ans. None, that I recollect of.

Cross-inter. 180. How long did she remain in the West and when did she return to Lee Center?

Ans. I can't tell you; that would involve the date of her going; that I can't recollect. She returned one year ago last March.

Cross-inter. 181. Where did you keep the package you refer to deposited?

Ans. I kept it deposited in my secretary.

Cross-inter. 182. Have you no impression or idea as to the amount of money it contained?

Ans. I could not tell; it was no very large sum, however.

762 Cross-inter. 183. Did you send any of it to her while she was West? If so, state the amount and the date of the remittances and how sent.

Ans. I can't state the amount with any accuracy. I think at one time I sent in the neighborhood of a hundred dollars—sent in a registered letter—to the postmaster in that vicinity, with a letter inclosed in it with the request to deliver it to Mr. Clapp.

Cross-inter. 184. Did you keep your own money deposited in the secretary at the same time?

Ans. I did keep it there, but not together.

Cross-inter. 185. From this package did you pay any bills for Henry Clapp or his wife; if so, when, and to whom?

Ans. I don't recollect to have paid any bills.

Cross-inter. 186. Do you remember Mrs. Clapp returning to Lee Center while she was making it her home at Red Oak, Iowa?

Ans. I do remember that she returned home from the West; am not sure it was from Red Oak or where it was.

Cross-inter. 187. Did you furnish her any money at that time, on the occasion of that visit?

Ans. I don't remember, but think it likely that she took some that was deposited.

Cross-inter. 188. Did you keep any account with your daughter of the money deposited and paid out for her, as you have stated?

Ans. I paid out no money for her that I remember. It was sent to her. As I have said before, I took no account of the money
763 deposited; consequently I cannot tell anything about it.

Redirect examination:

Inter. 1st. In your answer to the cross-interrogatory 133, referring to your deposition in the Edwin Clapp case, you say, "I corrected in that paper which purports to be the abstract of my testimony." Do you or not by that mean the deposition itself, and that you corrected it in that deposition?

Ans. I certainly meant the deposition itself.

Inter. 2d. You have referred to transactions with a Mrs. Haskell. State who she is and where she lived at the time of these transactions.

Ans. Mrs. Haskell is my eldest daughter; she lived about twenty rods from here, across the street.

Inter. 3. Is her husband living?

Ans. He is not. He died, I think, in 1866.

Inter. 4. State whether or not Mrs. Haskell had means or property of her own; if so, to what amount?

(Objected to.)

Ans. I don't feel at liberty to state anything about it, for the reason that she has business of her own to attend to and don't want to be drawn into other people's business or difficulties.

Inter. 5. State whether or not you ever said in the presence
764 of Fletcher D. Clapp or at any other time "that his father would have to swear that the sale to you was *bona fide* to protect yourselves on the case of Edwin Clapp against the farm, because you had been obliged to swear to that, and you did not want to injure your own good name," or anything to that effect.

(Objected to as immaterial.)

Ans. No, sir.

Inter. 6. Did Mrs. Henry Clapp ever say in your hearing that "we must hang onto Henry Clapp and not let him see any of his relatives until after he had given in his deposition in both these

cases, and if he once committed himself he could go to hell if he wanted to for all that she cared," or anything to that effect?

(Objected to as incompetent on redirect examination.)

Ans. In the first place, Mrs. Clapp doesn't use such language as that, that I am aware of; in the next place, I never heard her say anything of the kind—anything that could be remotely construed into anything of that kind.

Counsel for defendant wishes the examiner to note that he states that he omitted to ask on direct examination the last two preceding questions through oversight.

LOT CHADWICK.

Subscribed and sworn to before me this 31st day of July, A. D. 1883.

DWIGHT HEATON, *Examiner.*

765 Upon reading over the testimony of Lot Chadwick by the examiner the witness makes the following corrections:

1st. In his answer to the 73d direct interrogatory witness adds the following: "The money that I furnished was Mrs. Clapp's money deposited with me for safe keeping; I never furnished them any of my own."

2d. In his answer to 92d direct interrogatory witness wishes to add these words: "It is the amounts, with the interest to March 1st, 1869, added."

3d. In answer to 22d cross-inter. witness wishes to correct by stating that I sold some seven-thirty bonds, but don't recollect how much, to pay for part of the bank stock; also, I sold bonds to Hironimous Werter to amount of $1,700.00 and to Alpheus Skinner somewhere about $800.

4th. In answer to 75th cross-interrogatory witness corrects answer as follows: I had a large account book that I had used for a long time, and some time in 1870 or after that, the accounts all having been settled and the book written out full, no space left, having no further use for it, I cast it into the fire to get rid of the incumbrance.

766 MONDAY, *June 22nd*, 1885.

The defendants called as a witness JOHN C. JACOBS, who, being duly sworn, testified, on direct examination by Mr. DIXON, as follows:

1. State your name.
A. John C. Jacobs.
2. Where do you reside?
A. At Amboy, Illinois.
3. What is your business?
A. I am connected with the Illinois Central Railroad Company, acting in the capacity of division superintendent.
4. How long have you resided at Amboy?

A. Near—well, over 38 years, or 28 years—28 years.

5. For how many years have you been division superintendent for the Illinois Central Railroad Company?

A. Well, during that period, sir. I commenced with them in October, 1856, in that capacity.

6. Are you acquainted with one Martin L. Arnold, who resides in Amboy, Lee county, Illinois?

A. Yes, sir; I'm somewhat acquainted with him; know him when I see him.

7. How long have you known him?

A. I have known him since 1860, I believe, or thereabout.

8. Are you acquainted with his general reputation, in the neighborhood where he lives, for truth and veracity?

A. What is that question, Mr. Dixon?

9. Are you acquainted with his general reputation, in the
767 vicinity where he resides, for truth and veracity?

A. I presume I am, sir; I think I am.

10. What is that reputation, good or bad?

A. Well, sir, on the whole, probably it wouldn't be good—wouldn't be—it isn't good. I should say, perhaps—just a moment—I think I'll put that different. I think it would be regarded as bad for truth and veracity; or it isn't good, I think. I feel a good deal of delicacy in answering a question of that kind, gentlemen, and I don't know hardly how to put it. I presume it wouldn't be good, but I don't want to—I dislike very much to testify in cases of that kind.

Cross-examination waived by Mr. Bardwell.

JOHN JACOBS.

Subscribed and sworn to before me this fourteenth day of September, A. D. 1885.

JAMES F. SANFORD,
Special Commissioner.

768 The defendants called as a witness JOHN C. CHURCH, who, being duly sworn, testified, on direct examination by Mr. DIXON, as follows:

1. State your name.

A. John C. Church.

2. Where do you reside?

A. At Amboy.

3. How long have you lived there?

A. Well, sir, it is nearly 47 years; lacks a few days of it.

4. What is your occupation?

A. Farmer.

5. Have you held or do you now hold any official position in Lee county?

A. The office of coroner.

6. Are you acquainted with Martin L. Arnold, of Amboy?

A. I have been acquainted with him somewhat over 20 years. I

can't tell how long he has been there. I have been somewhat acquainted with him ever since he came there.

7. Are you acquainted with his general reputation in the neighborhood where he resides for truth and veracity?

A. Well, I don't know as I'm a judge. I never had any dealings particular with him.

8. I don't ask you for your personal experience with him, but I inquire as to his general reputation. Are you acquainted with his general reputation in the neighborhood where he lives for truth and veracity?

A. I don't know as I can answer that question. I ought to be.

769 9. Well, do you think you are acquainted with what is said of his general reputation for truth and veracity in the neighborhood where he lives?

A. I don't know but I am.

10. What is that reputation, good or bad?

(Counsel for complainants objects to question, *as* the proper foundation for the question not having been laid.)

A. Well, I shouldn't call it good.

On cross-examination by Mr. BARDWELL said witness further testified as follows:

1. How recently have you heard any one speak of his truthfulness or veracity?

A. Why, I don't think I have heard his name mentioned for some two or three years, I should think.

2. About when was the first that you heard anything said in reference to his truthfulness or veracity?

A. I couldn't tell, Mr. Bardwell. I used to hear occasionally a remark like this: they couldn't take his word; and I never would ask any question why or anything of that kind.

3. Can you name any person that ever spoke unfavorably of his truthfulness or veracity?

A. I don't know as I can.

4. As I understand you, you haven't heard his name mentioned in that connection for three or four years?

770 A. Why, quite awhile, anyway. I haven't seen him about much for the last three or four years, but a very few times I have noticed him on the street. I'm a rather peculiar man about such things. If I don't have business with anybody I go right along. Men that have been in Amboy 20 years, I know their faces, but I don't know their names.

5. How many different persons can you now swear you heard speak of his truthfulness or veracity?

A. Oh, I couldn't say, Mr. Bardwell. I know several years ago there was a good deal of talk about Mr. Arnold. I never had any trouble with the man; I didn't want to get into any difficulty; but *would something* come up, you know, of that kind that wouldn't be

pleasant. I can recollect one circumstance. (Mr. Bardwell objects to witness going into any circumstances or transactions, except such as may be conversations or statements as to truthfulness and veracity.) I say I would be on the street and something would come up and his name was brought in. I never inquire about another man's business; pass right along.

6. Didn't most of those remarks that you refer to come from persons who were claiming to have some business difficulty with Arnold?

A. Oh, I should suppose, probably, they were; no doubt of that.

771 On redirect examination by Mr. DIXON said witness further testified as follows:

1. You are asked if you remember of a number of persons whom you have heard speak of his character for truthfulness. I'll inquire whether you haven't known of his having been successfully impeached in trial in the circuit court of Lee county on several occasions?

Counsel for complainant obj. as incompetent and calling for the conclusions of the witness—the opinion of the witness, rather.

A. I have heard of such things.

On cross-examination by Mr. BARDWELL said witness further testified as follows:

1. Were you a witness in any case or cases referred to?
A. No, sir; never.
2. Were you present at the hearing of such case or cases?
A. No, sir.

JOHN C. CHURCH.

Subscribed and sworn to before me this twenty-eighth day of July, A. D. 1885.

JAMES F. SANFORD,
Special Commissioner.

772 The defendant then called as a witness HENRY E. BADGER, who, being duly sworn, testified, on direct examination by Mr. BEEHEA, as follows:

1. What is your name?
A. Henry E. Badger.
2. What is your occupation?
A. I'm postmaster.
3. How long have you lived at Amboy?
A. 35 years or more.
4. What is your age?
A. 68.
5. Do you know Martin L. Arnold?
A. I do.
6. How long have you known him?
A. Well, I should judge, over 30 years.
7. How near does he live to you?

A. Well, he has lived most of the time within about a mile and a quarter.

8. Are you acquainted with his reputation for truth and veracity in the neighborhood where he lives?

A. Well, to some extent, yes, sir.

9. What is that reputation, good or bad?

(Counsel for complainant objects, the proper foundation for the question not having been laid.)

A. Not good.

On cross-examination by Mr. BARDWELL said witness further testified as follows:

1. How recently have you heard any one speak of his truthfulness and veracity?

A. Well, we have been talking about it to-day.

773 2. Who were you talking to-day with about it?

A. Well, these witnesses—neighbors here.

3. When before did you talk about it and with whom?

A. I haven't heard much said about him for a year or two. He's kind of dropped out; don't seem to be recognized much there.

4. Did you ever have any trouble with him?

A. No; nothing special.

5. Have any trouble that wasn't special?

A. Well, no; I don't know as I have. He's a good deal of a bore.

6. Hasn't bored you any for a year and half or two years, has he?

A. Not much; no.

7. How many times have you been called to testify as a witness as to his reputation for truth and veracity?

A. Well, I don't know whether it was more than once, but once anyway. I don't know whether it was more than that or not.

On this being read over to the witness counsel for the defendants asked this further question:

Are you acquainted with the general reputation of Martin L. Arnold for truth and veracity in the neighborhood where he resides?

Counsel for complainants objects to further examination of this witness, he having already been examined for impeaching purpose.

774 A. Yes, sir.

What is it—good or bad?

A. Not good.

Cross-examination:

How many persons have you heard speak of the truthfulness in three years last past?

A. Oh, quite a number. I couldn't say exactly. I should think ten or a dozen times, anyway.

pleasant. I can recollect one circumstance. (Mr. Bardwell objects to witness going into any circumstances or transactions, except such as may be conversations or statements as to truthfulness and veracity.) I say I would be on the street and something would come up and his name was brought in. I never inquire about another man's business; pass right along.

6. Didn't most of those remarks that you refer to come from persons who were claiming to have some business difficulty with Arnold?

A. Oh, I should suppose, probably, they were; no doubt of that.

771 On redirect examination by Mr. DIXON said witness further testified as follows:

1. You are asked if you remember of a number of persons whom you have heard speak of his character for truthfulness. I'll inquire whether you haven't known of his having been successfully impeached in trial in the circuit court of Lee county on several occasions?

Counsel for complainant obj. as incompetent and calling for the conclusions of the witness—the opinion of the witness, rather.

A. I have heard of such things.

On cross-examination by Mr. BARDWELL said witness further testified as follows:

1. Were you a witness in any case or cases referred to?
A. No, sir; never.
2. Were you present at the hearing of such case or cases?
A. No, sir.

JOHN C. CHURCH.

Subscribed and sworn to before me this twenty-eighth day of July, A. D. 1885.

JAMES F. SANFORD,
Special Commissioner.

772 The defendant then called as a witness HENRY E. BADGER, who, being duly sworn, testified, on direct examination by Mr. BEEHEA, as follows:

1. What is your name?
A. Henry E. Badger.
2. What is your occupation?
A. I'm postmaster.
3. How long have you lived at Amboy?
A. 35 years or more.
4. What is your age?
A. 68.
5. Do you know Martin L. Arnold?
A. I do.
6. How long have you known him?
A. Well, I should judge, over 30 years.
7. How near does he live to you?

A. Well, he has lived most of the time within about a mile and a quarter.

8. Are you acquainted with his reputation for truth and veracity in the neighborhood where he lives?

A. Well, to some extent, yes, sir.

9. What is that reputation, good or bad?

(Counsel for complainant objects, the proper foundation for the question not having been laid.)

A. Not good.

On cross-examination by Mr. BARDWELL said witness further testified as follows:

1. How recently have you heard any one speak of his truthfulness and veracity?

A. Well, we have been talking about it to-day.

773 2. Who were you talking to-day with about it?

A. Well, these witnesses—neighbors here.

3. When before did you talk about it and with whom?

A. I haven't heard much said about him for a year or two. He's kind of dropped out; don't seem to be recognized much there.

4. Did you ever have any trouble with him?

A. No; nothing special.

5. Have any trouble that wasn't special?

A. Well, no; I don't know as I have. He's a good deal of a bore.

6. Hasn't bored you any for a year and half or two years, has he?

A. Not much; no.

7. How many times have you been called to testify as a witness as to his reputation for truth and veracity?

A. Well, I don't know whether it was more than once, but once anyway. I don't know whether it was more than that or not.

On this being read over to the witness counsel for the defendants asked this further question:

Are you acquainted with the general reputation of Martin L. Arnold for truth and veracity in the neighborhood where he resides?

Counsel for complainants objects to further examination of this witness, he having already been examined for impeaching purpose.

774 A. Yes, sir.

What is it—good or bad?

A. Not good.

Cross-examination:

How many persons have you heard speak of the truthfulness in three years last past?

A. Oh, quite a number. I couldn't say exactly. I should think ten or a dozen times, anyway.

Name a single person whom you have heard speak of his truthfulness within three years last past.

A. Well, I think I have heard Charlie Bell for one. I think I have heard Chester Badger for one. I have heard others, but they don't come to my mind—the names don't.

Name the time and place, when and where, you heard Chester Badger and Charlie Bell speak on the subject.

A. Well, it has been some time. His name in business circles and social circles has dropped out and has not been questioned in the last year or two.

He has been living in or in the neighborhood of Amboy for several years last past, has he not?

A. He has.

Where does he now reside?

A. Well, I can't say. I don't know of his living out of the city limits.

Is it your understanding that he lives in the city?

A. Yes.

775 HENRY E. BADGER.

Subscribed and sworn to before me this twenty-eighth day of July, A. D. 1885.

JAMES F. SANFORD,
Special Commissioner.

776 The defendant then called as a witness JOSIAH LITTLE, who, being duly sworn, testified, on direct examination by Mr. BETHEA, as follows:

1. What is your name?
A. Josiah Little.
2. Residence?
A. Amboy.
3. Age?
A. 53.
4. Occupation?
A. Banker.
5. How long have you lived in Amboy?
A. 31 years.
6. What has been your occupation there during that time?
A. Merchant and banker.
7. Are you acquainted with—do you know Martin L. Arnold?
A. Yes, sir.
8. How long have you known him?
A. Twenty years or more.
9. How far has he lived from you during that time?
A. Most of the time he has lived in the city.
10. Are you acquainted with his reputation for truth and veracity in the neighborhood where he lives?

(Counsel for complainant objects.)

A. I have been up to within a year or two.

11. Do you think you are acquainted now?

(Counsel for complainant objects.)

777 A. For the last year or two I have heard nothing of him.

12. Well, do you think that he has a reputation in the neighborhood where he lives?

(Counsel for com. obj.)

A. Yes, sir; I think he has.

13. Do you think you know it now?

A. His reputation has been bad.

(Counsel for com. obj. to answers, proper foundation not having been laid.)

14. Do you think you know his reputation now? You say he has one. Do you think you know it now?

(Counsel for com. obj. as incompetent.)

15. Well, what has been his reputation for truth and veracity?

(Counsel for com. obj., proper foundation not having been laid.)

A. It hasn't been very good.

16. What is his reputation now for truth and veracity in that neighborhood?

(Counsel for com. obj., witness has stated that he doesn't know his present reputation for truth and veracity.)

A. I don't think I have heard anything of him for the last year or so or more.

17. What was his reputation for truth and veracity; were you acquainted with his reputation for truth and veracity in the years 1883 and '84 in the neighborhood where he lived?

(Counsel for com. obj. as incompetent.)

778 A. My judgment is his reputation at that time wasn't good.

(Counsel for com. obj. as not responsive to the question.)

18. Please state first whether you are acquainted with his reputation in 1883 and '84.

(Counsel for com. obj. as incompetent.)

A. I think I was.

19. What was it?

A. Not very good.

On cross-examination said witness further testified as follows:

1. What time in 1884 did you hear any one speak of his truthfulness and veracity?

A. I couldn't say.

2. Are you sure that you did any time during that year?

A. No, sir; I couldn't give name or date.

3. Could you name any one that you heard speak on the subject in the year 1883?

A. No, sir.

4. Are you sure that you heard any one speak of or refer to his truthfulness and veracity in the year 1883?

A. Quite sure; yes, sir.

5. But can't state whether in the early or latter part of the year?

A. No, sir.

6. Can you state who you heard speak on the subject in the year 1883?

A. No, sir.

779–799 7. Or the occasion or time that you heard it?

A. No, sir.

8. Or what transaction, if any, it related to?

A. No, sir.

9. Or who, if any one, was present besides yourself?

A. No, sir.

10. How many times have you been called to testify as to Mr. Arnold's reputation for truth and veracity?

A. I think this is the third time.

11. Do you remember whether or not on any of the other occasions Mr. Jacobs was also a witness?

A. I remember one occasion.

12. Was he or not a witness on the occasion last referred to?

A. I'm really not positive, but I think he was.

13. You are quite sure that he has testified on the subject before to-day, are you not?

A. Yes, sir.

On redirect examination by Mr. BETHEA said witness further testified as follows:

1. How many times has Mr. Arnold's reputation for truth and veracity in that neighborhood been successfully impeached to your knowledge?

(Counsel for com. obj. to question as not competent, leading, and calling for the guess of the witness.)

A. I couldn't say.

Q. How many times has it been attempted, to your knowledge?

800 (Counsel for com. obj. as incompetent.)

A. This is the third time.

3. What was your testimony on each of the former trials on that subject?

(Counsel for def. obj. as incompetent and impertinent.)

A. That his reputation was bad.

On recross-examination by Mr. BARDWELL said witness further testified as follows:

1. And the cause you refer to related to a controversy between Edwin Clapp and Lot Chadwick, did they not?
A. I presume so; I don't remember distinctly; I couldn't have told the case until you reminded me of it.
2. On each of those occasions some of the witnesses who are here to-day were also called to testify on the same subject, were they not?
A. I think they were.

On the testimony of this witness being read to him, counsel for defendant asked this further question:

Are you acquainted with the general reputation of Martin L. Arnold for truth and veracity in this neighborhood where he resides?
I think I am.
What is it—good or bad?
Bad.

801 Cross-examination:

Have you heard any one speak of his truthfulness within a year or two prior to your being subpœnaed in this case?
I presume never have.
Have you heard any one speak of it since you were subpœnaed; and, if so, whom?
I think of no one except some of the witnesses in this case.

JOSIAH LITTLE.

Subscribed and sworn to before me this twenty-eighth day of July, A. D. 1885.

JAMES F. SANFORD,
Special Commissioner.

802 The defendants then called as a witness HENRY ADAMS, who, being duly sworn, testified, on direct examination by Mr. BETHEA, as follows:

1. What is your name?
A. Henry Adams.
2. Age?
A. 51.
3. Occupation?
A. Farmer; I hold the office of constable.
4. Place of residence?
A. Amboy.
5. How long have you lived in Amboy?
A. 40 years.
6. Do you know Martin L. Arnold?
A. I do.
7. How long have you known him?

A. Well, 25 years.
8. How near have you lived to him during that time?
A. About a mile and a quarter or mile and half.
9. Are you acquainted with his reputation for truth and veracity in that neighborhood?

(Counsel for com. obj. as incompetent.)

A. Well, I was at one time.
10. Are you acquainted with it now?
A. Well, I haven't heard much said lately.
11. How lately have you heard anything said about him?

(Counsel for com. obj.)

A. Well, I was talking to Mr. Spofford to-day.
12. You say you have been acquainted with his reputation.
803 When was the last time or period that you can say you were acquainted with his reputation?

(Counsel for com. obj.)

A. Well, there hasn't been anything said for some years about the matter until recently, since we were subpœnæd here, and I have heard some conversation since then.
13. Well, what is your answer to the question as to what is his reputation now?

(Counsel for com. obj. as incompetent.)

A. Well, I should say it was bad.
14. Well, what is your answer to the question as to whether you are acquainted with it or not?

(Counsel for com. obj.)

A. I am acquainted.
15. What is it?
A. Bad.

Recross-examination by Mr. BARDWELL:

Said witness further testified as follows:

1. Who did you say you heard talking about it to-day?
A. I think I heard Mr. Spofford.
2. Was he a witness subpœnæd in this case?
A. I think not.
3. Who else did you talk with on the subject recently?
A. Well, some other person was mentioned that talked about Arnold, but I can't tell who.
4. Can you tell when it was or where?
A. Unless it was Squire Patterson.
804 5. When did you hear him speak on the subject?
A. Well, within a few days, if it was him.
6. Since your subpœna in this case?
A. Yes, sir.

7. Do you know whether or not he was a witness in the case or subpœnaed to be a witness?

A. I think not. I don't think he is.

8. Are those the only two that you have heard speak on the subject within the last year and half?

A. I have no recollection of any others now. There might have been, but I don't call them to mind now.

9. Have you been called to testify in any other case on this subject?

A. Yes; once.

10. How long ago?

A. Well, a year or two; I don't recollect just how long—two years, perhaps.

On this being read over to witness the counsel for defendants asked the further question:

Are you acquainted with the general reputation of Martin L. Arnold for truth and veracity in the neighborhood where he resides?

(Counsel for complainant objects to the above question, the witness having already been examined for impeaching purposes.)

Well, I was at one time when Charlie Bell had his lawsuit. At that time his reputation was pretty generally discussed; a
805 year or two ago. I haven't heard much said since the lawsuit until within a short time. I think I know what it is now. I have heard it discussed in the last few days.

What is it, good or bad?

A. Bad.

Cross-examination:

You say that you have heard it discussed within a few days? State the days to which you refer.

A. Yesterday.

Any other day or days?

Well, I think there is. I can't tell the day.

Who did you talk with yesterday?

Philip Clark.

Any one else?

I don't recollect of any one.

He has been called to testify in this case as to Arnold's reputation, has he not?

I believe he has.

You heard his truthfulness talked of at the time of Charlie Bell's lawsuit with him, and since then you have not heard much said about it until within a few days, as I understand you?

That is so.

The few days you refer to is since you were subpœnaed to testify on this occasion, are they not?

They are.

And since you were so subpœnaed you are unable to recall the

name of any other person than Clark with whom you have
806 talked on the subject?

Mr. SPOFFORD: Any one else?

I talked with others, but I can't call them to mind now.

On what day were you subpœneed?

Two or three weeks ago. I can't tell the day now; perhaps longer than that.

Can you say on what day your first conversation above was completed at Dixon?

I cannot.

This additional testimony is being taken here at Amboy on the twenty-eighth of July, is it not?

Yes, sir.

HENRY ADAMS.

Subscribed and sworn to before me this twenty-eighth day of July, A. D. 1885.

JAMES F. SANFORD,
Special Commissioner.

807 The defendants then called as a witness WILLIAM B. ANDRUSS, who, being duly sworn, testified, on direct examination by Mr. BETHEA, as follows:

1. State your name, age, occupation, and place of residence.
A. William B. Andruss; 61 years of age.
2. Occupation.
A. Justice of the peace and insurance agent.
3. Residence.
A. Amboy.
4. How long have you lived in Amboy?
A. 29 years or a little more.
5. What has been your business since moving there?
A. Merchandizing and acting as justice of the peace.
6. How long have you been justice of the peace?
A. About 23 years; almost all the time. I was elected first in '62.
7. Do you know Martin L. Arnold?
A. I do.
8. How long have you known him?
A. Well, nearly ever since I have been in Amboy, if not quite. I'm not certain whether he was in Amboy when I came or not.
9. How near have you lived to him during your residence in Amboy?
A. Within a half mile; some of the time nearer.
10. Are you acquainted with his reputation for truth and veracity in that neighborhood?

(Counsel for com. obj. as incompetent.)

808 11. Are you acquainted with his general reputation in the neighborhood where he lives for truth and veracity?
A. His reputation up to within a short time was bad and within a short time I haven't heard it discussed.

(Counsel for com. obj. to answer as not responsive to the question.)

12. How long since you have heard it discussed?

(Counsel for com. obj. as incompetent.)

A. I should say it was from a year to a year and a half the last time I was called to testify in this matter. I haven't heard anything since that time.

On cross-examination by Mr. BARDWELL said witness further testified as follows:

1. How many times have you been called to testify on this subject?

A. My impression is that I have been called three times before this; two certainly, and I guess three.

2. Was the last time about two years ago?

A. A year and a half or two years, I should think.

3. Did you hear anything then on the subject more than what was said by witnesses?

A. I didn't on those particular occasions, of course, only what was said by witnesses.

WM. B. ANDRUSS.

Subscribed and sworn to before me this twenty-eighth day of July, A. D. 1885.

JAMES F. SANFORD,
Special Commissioner.

809 The complainants then called as a witness Dr. RYON, who, being duly sworn, testified, on direct examination by Mr. DIXON, as follows:

1. What is your name?

A. George Ryon.

2. Where do you reside?

A. Amboy, Lee county, Illinois.

3. What is your occupation?

A. Physician.

4. How long have you been practicing your profession?

A. Something over 30 years.

5. Are you acquainted with William E. Ives, of Amboy?

A. I am.

6. Do you remember the fact of a deed having been made by William E. Ives to you, dated the 14th of July, 1859, conveying a part or interest in lot 5, of block 11, of the original town of Amboy?

A. I do.

7. Do you know whether Mr. Ives at that time or about that time was in possession of any part of lot 5?

A. He had an office on the northwest corner of the lot, fronting on Main street.

8. For what purpose was that conveyance made to you, if you know?

(Counsel for com. obj.)

A. Well, I suppose the conveyance was made to secure a loan of money that I made to Mr. Ives.

810 9. Did you, under that deed, ever take possession of or control any part of the lot?

A. I didn't.

10. Or claim control or right to control it?

A. I never claimed any right to control it. I never claimed ownership by virtue of the conveyance.

11. What part of that lot 5 did you understand or do you understand was conveyed or intended to by conveyed to you by the deed of July 5th, 1859?

(Counsel for com. obj.)

A. I understood that it was the corner where the office was located.

12. Do you know how much frontage?

A. I have no recollection.

On cross-examination by Mr. BARDWELL said witness further testified as follows:

1. How much money do you think you loaned Mr. Ives?

A. Well, my recollection is that he had $1,500.00.

2. Was this the only security that you had?

A. That lot; no, sir; not the lot there in controversy wasn't the only security.

3. What was the other security that you had?

A. It conveyed several pieces, several lots, including the property where Briggs now lives.

4. Did he make to you any other conveyance other than the one referred to as security?

811 A. Well, no. I have no recollection in regard to the matter about any other conveyance; it may be possible there have been other conveyances.

5. Did he make the conveyance to you before or after you let him have the money?

A. It was some time after.

6. About how long after?

A. It is a pretty hard matter for me to call that to mind now. My recollection is now, in pondering over the matter, that I let him have sums of money at different times, perhaps for a year or more, possibly two years prior to this time, and the amount aggregated somewhere in the neighborhood of $1,500.00 or over.

7. Did you demand security of him or did he tender it to you without your request?

A. He tendered it to me.

8. When, if at all, were you paid or repaid?

A. Well, that is a matter that I have got to ponder over again.

He sold the property that Briggs now occupies to him, and upon the sale of that property he paid the debt that he owed to me.

9. How much did he pay you?

A. Well, sir, that is something I can't answer at the present time. He paid me the amount that I held against him, more or less; he paid a part before that time, but he paid whatever balance was due at that time.

10. When he gave you this deed did you examine into the title?

A. I didn't.

812 11. Why did you not?

A. For the fact that I didn't demand the security and hence paid no attention to the title.

12. Had you any other deals with him during the time covered by this transaction you refer to?

A. I don't think of any now. I may have had, but there don't any occur to me at the present time.

13. Do you know whether he made use of the money you say he borrowed of you to buy or pay for any portion of the property you have mentioned?

A. That is something I don't know anything about. I don't know that he did or didn't.

14. When was your attention first called to the fact that the deed to you conveyed all of lot 5, block 11?

A. Well, it is only a short time ago Mr. Ives called my attention to the fact and wanted to know if I recollected anything about having a deed for that lot 5, block 11, and I told him I had no recollection about it.

15. Can you state the circumstances under which you loaned him any of the money mentioned?

(Counsel for defendants objects as immaterial.)

A. I don't know that I can, Mr. Bardwell, at the present time. The time is too long and there's nothing that made any particular impression on my mind.

813 16. Did he give you any note or notes for any of the sums you say you loaned him?

A. He did. He gave me his note for each amount at the time the loan was made.

17. Did you loan the money for yourself or for some other person?

A. For myself.

18. Did you at any time occupy any part of this lot 5 referred to?

A. I never did.

19. Who afterwards owned the part the office was located on?

A. Well, until the present time or perhaps for the past ten years I can tell who exercised ownership over it and controlled it, but previous to that time that the office was burnt down—from the time that the office was burnt down up to these last ten or twelve years I know nothing about who controlled it or exercised ownership over it.

20. Has there been no building on it since the fire?

A. There is a building on it—yes, sir—at the present time.

21. You are related in some manner, are you not, to Mr. Ives?
A. Mr. Ives' wife when she was living was my sister.
22. Was he married to her before the transaction referred to?
A. He was.

GEORGE RYON.

Subscribed and sworn to before me this fourteenth day of September, A. D. 1885.

JAMES F. SANFORD,
Special Examiner.

814 MONDAY, *July 27th*, 1885.

The complainants called as a witness CHARLES W. BELL, who, being duly sworn, testified, on direct examination by Mr. DIXON, as follows:

1. What is your name?
A. Charles W. Bell.
2. Where do you reside?
A. Amboy, Lee county.
3. How long have you lived there?
A. Something over 30 years.
4. What official position do you now hold in Amboy?
A. I'm constable.
5. How long have you been constable in Amboy?
A. Between 25 and 30 years.
6. Have you not also been marshal of the city?
A. At times.
7. Are you acquainted with Martin L. Arnold, of Amboy?
A. I am.
8. How long have you known him?
A. Why, since I have been in Amboy. I presume it is over 25 years. I can't say exactly.
9. Are you acquainted with his general reputation for truth and veracity in the neighborhood where he lives?
A. I think so.
10. What is that reputation—good or bad?
A. Bad, I think.

815 On cross-examination by Mr. BARDWELL said witness further testified as follows:

1. You have been called to testify before this as to Arnold's reputation, have you not?
A. It seems so.
2. On what occasion were you so called?
A. I don't know whether it was this case or not. It was some case here in this office. I don't remember. I don't know as I can tell now.
3. Do you remember who else, if any one, was called at that time to testify as to his reputation?
A. I think Mr. Adams, Mr. Andruss, and a number of others, I think. I don't know as I can recollect, exactly.

4. Have you been called for that purpose more than once before to-day?

A. I have.

5. Who, if any one, else than yourself was called on the other occasions you refer to?

A. Josiah Little, R. H. Mellen, Henry Badger, Henry Adams, William B. Andruss.

6. You have had litigation with Mr. Arnold, have you not?

A. I have.

C. W. BELL.

Subscribed and sworn to before me this twenty-eighth day of July, A. D. 1885.

JAMES F. SANFORD,
Special Commissioner.

816 The complainants called as a witness CHESTER BADGER, who, being duly sworn, testified, on direct examination by Mr. DIXON, as follows:

1. State your name, please.

A. Chester Badger.

2. Where do you reside?

A. Amboy, Lee county.

3. How long have you lived at Amboy?

A. 45 years.

4. What has been your occupation since you have lived there?

A. Milling has been my main occupation, and farming.

5. Are you acquainted with Martin L. Arnold, of Amboy?

A. Yes, sir.

6. How long have you known him?

A. Well, I should think 20 or 25 years; maybe longer.

7. Are you acquainted with his general reputation for truth and veracity in the neighborhood where he lives?

A. Well, I suppose I am to a certain extent.

8. What is that reputation, good or bad?

(Mr. Bardwell objects as not competent, proper foundation not having been laid.)

A. Well, it is not very good.

On cross-examination by Mr. BARDWELL said witness further testified as follows:

817 1. Have you heard any one speak of his truthfulness within two years last past?

A. No, sir; I haven't; I don't remember of it.

2. How recently, if at all, have you heard the subject of his truthfulness mentioned?

A. I don't know that I have heard it within two or three years.

3. Do you remember who you then heard speak of it?

A. No, sir; I don't.

CHESTER BADGER.

Subscribed and sworn to before me this twenty-eighth day of July, A. D. 1885.

JAMES F. SANFORD,
Special Commissioner.

818 The complainants then called as a witness GEORGE F. WOODS, who, being duly sworn, testified, on direct examination by Mr. DIXON, as follows:

1. State your name, please.
A. George F. Woods.
2. Where do you reside?
A. At Amboy.
3. What is your occupation?
A. I'm in the dry-goods business.
4. How long have you been engaged in the dry-goods business in Amboy?
A. I have been engaged in the dry-goods business myself for about 5 years.
5. How long have you resided at Amboy?
A. 19 years.
6. In what business have you been engaged during that 19 years?
A. About 14 years of them I was clerking in the dry-goods business.
7. Are you acquainted with Martin L. Arnold, of Amboy?
A. Yes, sir.
8. How long have you known him?
A. Well, possibly 12 or 15 years.
9. Are you acquainted with his general reputation for truth and veracity in the neighborhood where he lives?
A. I think I am.
10. What is that reputation, good or bad?
A. It is bad.

819 On cross-examination by Mr. BARDWELL said witness further testified as follows:

1. How far do you live from Mr. Arnold's place of residence?
A. Possibly, a block and a half.
2. How recently have you heard any one say anything as to his truthfulness?
A. Well, it is two or three years since I have heard any one say anything much about it.
3. Do you remember who you then heard speak on the subject?
A. I do not.
4. Do you remember whether what you then heard related to any litigation?
A. No, sir.
5. Do you mean that you don't remember whether it related to litigation or not?
A. I don't remember.

6. Do you know whether any suit was then pending or had been recently disposed of?
A. I don't.
7. In which Mr. Arnold was interested?
A. No, sir.

GEORGE F. WOODS.

Subscribed and sworn to before me this twenty-eighth day of July, A. D. 1885.

JAMES F. SANFORD,
Special Commissioner.

820 The defendants then called as a witness PHILIP CLARK, who, being duly sworn, testified, on direct examination by Mr. DIXON, as follows:

1. State your name, please.
A. Philip Clark.
2. Where do you reside?
A. Amboy.
3. What is your occupation?
A. Grocery clerk.
4. How long have you resided in Amboy?
A. About 15 years.
5. What has been your occupation that 15 years?
A. I have been clerking during the time.
6. Are you acquainted with Martin L. Arnold, of Amboy?
A. Yes, sir.
7. How long have you known him?
A. About 12 or 14 years—shortly after I came there.
8. Are you acquainted with his general reputation for truth and veracity in the neighborhood where he lives?
A. I know something about him, I guess.
9. I'll ask you again whether you think—or are you acquainted with his general reputation for truth and veracity in the neighborhood where he lives?
A. Somewhat.
10. Now, I'll ask you what it is, what is that reputation, good or bad?

821 (Mr. Bardwell objects as incompetent, proper foundation not having been laid.)

A. Not very good.

On cross-examination by Mr. BARDWELL said witness further testified as follows:

1. Have you ever had any difficulty or controversy with Mr. Arnold?
A. Not personally.
2. Had there been any controversy with Mr. Arnold in which you were interested in any way?
A. No, sir.

3. Have you ever heard any one say anything about Mr. Arnold's truthfulness?

A. Yes, sir.

4. How recently?

A. Well, I don't know exactly.

5. Within two or three years last past?

A. Yes, sir.

6. Who did you hear speak of his truthfulness within that time?

A. Well, I heard different persons; I don't know whether I could call their names or not.

7. Name one of them.

A. Tom McIntire.

8. McIntire had litigation with Mr. Arnold, did he not?

A. I believe he did; yes, sir.

9. Was it on or about the time of that litigation?

A. About the time and since.

822 10. Well, who else did you hear speak about his truthfulness?

A. I don't know any others.

11. Can't you name any other one?

A. No.

12. When did you last hear Mr. McIntire speak on the subject?

A. During the past year.

13. Can you say that you heard any one else than McIntire speak of Arnold's truthfulness within two years last past?

A. Yes, sir.

14. Fix the date, time, and place of any other conversations you may have heard relating to his truthfulness.

A. I can't fix the date definitely; the place would probably be at the store where I worked; at the store was the place I heard it.

15. But you can't state who it was that thus spoke in relation to Arnold?

A. I don't remember now.

16. Can you state how many different ones you heard speak on the subject within two years last past?

A. No, sir.

PHILIP CLARK.

Subscribed and sworn to before me this twenty-eighth day of July, A. D. 1885.

JAMES F. SANFORD,
Special Examiner.

823 DEFENDANTS' EXHIBIT.

JULY 26, A. D. 1886.

Defendants offer in evidence a note dated December 4th, 1855, signed by R. W. Clapp, marked Exhibit 1 of Defendants' Testimony; also a note of the same date, marked Exhibit 2 of Defendants' Testimony; also note of the same date, marked Exhibit 3 of Defendants' Testimony.

Counsel for complainants objects to the introduction of said exhibits.

Defendants offer in evidence a deed from Edwin Clapp and wife to R. W. Clapp and marked Exhibit 4 of Defendants' Testimony.

Counsel for complainants objects to the introduction of said exhibit as irrelevant, and also because the proper preliminary proof to render it admissible has not been introduced, and because the apparent mutilations therein have not been explained nor accounted for.

Also a deed from Jason Clapp and wife to R. W. Clapp, and marked Exhibit 5 of Defendants' Testimony.

Counsel for complainants interposes the same objection as to the last exhibit.

Also a deed from R. W. Clapp and wife to Henry Clapp, marked Exhibit 6 of Defendants' Testimony.

Counsel for complainants objects to the introduction of said deed as being incompetent.

824 Also a deed from Henry Clapp and wife to Lot Chadwick, marked Exhibit 7 of Defendants' Testimony.

(Objected to by complainants' counsel.)

Defendants also offered in evidence a certified copy of the record of the pleadings and decree in the case of Lot Chadwick *v.* Edwin Clapp *et al.*, in the circuit court of Lee county, Illinois, and marked Exhibit 8 of Defendants' Testimony.

(Objected to by complainants' counsel as being incompetent.)

Defendants also offer in evidence a deed from Edwin Clapp and Mary M. Clapp, by Dwight Heaton, master in chancery, to Lot Chadwick, marked Exhibit 9 of Defendants' Testimony.

825 *Bill of Complaint.*

STATE OF ILLINOIS, } ss:
County of Lee, }

In the Circuit Court of Lee County. December Term, A. D. 1869.
In Chancery.

To the Hon. William W. Heaton, judge of the 22nd judicial circuit, in chancery sitting:

Humbly complaining, showeth unto your honor your orator, Lot Chadwick:

That heretofore, to wit, on the fourteenth day of October, A. D. 1853, one John F. Clapp, being then seized in fee of and in the following-described real estate, situate in the county of Lee, to wit: The east half of the southwest quarter of section number twenty-eight (28) and the east half of the northwest quarter of section number (33) thirty-three, all in township number (21) twenty-one of range number (11) eleven east of the fourth principal meridian, did on said day sign, seal, execute, and deliver to one Jason Clapp and one Edwin Clapp a warranty deed, in and by which he conveyed to them his title to said lands, and which said deed was,

on October 29th, A. D. 1853, filed for record in the recorder's office in and for said county of Lee and duly recorded in said office in Book J of Deeds, at page 88, as will more fully appear from a certified copy of said record, to which your orator prays leave to refer; and your orator further shows that
826 on the 29th day of October, A. D. 1853, one Lewis Clapp, being then the owner in fee of the following-described real estate, also situate in said county of Lee, to wit: The northeast quarter of section number (33) thirty-three, in township number (21) twenty-one, of range number (11) eleven east, of the fourth principal meridian, did on that day sign, seal, execute, and deliver a warranty deed in and by which he conveyed his title to said land to the said Edwin Clapp; which said deed was afterwards, to wit, on the same day, filed for record in the said recorder's office, and was duly recorded therein in Book J of Deeds, on page 89, as will more fully appear from a certified copy of said record, to which your orator prays leave to refer.

And your orator further shows that afterwards, to wit, on or about the 28th day of November, A. D. 1855, the said Jason Clapp made, executed, and delivered to one Ruggles W. Clapp a warranty deed by which he conveyed to the said Ruggles the title to one undivided half of the two tracts of land first hereinabove described (together with other land in the said deed described), which deed was duly acknowledged and was filed for record*ed* in the said recorder's office in Lee county on the 5th day of December, A. D. 1855, and was recorded in said office in Book M of Deeds, on pages 525 and 526, to a certified copy of which your orator prays leave to refer.

827 And your orator further shows unto your honor that on the 28th day of November, A. D. (1855) eighteen hundred and fifty-five, the said Edwin Clapp and Mary M. Clapp, his wife, did sign, seal, execute, and deliver a certain warranty deed in and by which they conveyed to the said Ruggles W. Clapp their title in and to the one undivided half of the said two first hereinabove-named parcels of land, and also all of the said parcel of land next hereinabove described—that is to say, the undivided half of the east half of the northwest quarter of section number (33) thirty-three and the undivided half of the east half of the southwest quarter of section number (28) twenty-eight, and all of the northeast quarter of section number (33) thirty-three, all of said parcels of land being in township number (21) twenty-one, of range number (11) eleven east, of the 4th principal meridian; which said deed was executed by the said Edwin Clapp and Mary M. Clapp in Berkshire county, in the State of Massachusetts, and the execution thereof was acknowledged by the said Edwin Clapp and Mary M. Clapp before John A. Walker, Esquire, who was then and there an acting justice of the peace in and for said Berkshire county, on the said 28th day of November, A. D. 1855, and was by the said Ruggles W. Clapp filed for record in the recorder's office in said county of Lee on the fifth day
828 of December, A. D. eighteen hundred and fifty-five.

And your orator further avers and shows unto your honor

that afterwards, to wit, on the tenth day of January, A. D. (1868) eighteen hundred and sixty-eight, the said Ruggles W. Clapp and his wife signed, sealed, executed, and delivered to one Henry Clapp their deed, in and by which they conveyed to the said Henry all their right, title, and interest in and to all the lands hereinabove described, which deed was duly acknowledged and was filed for record in said recorder's office on the 30th day of January, A. D. 1868, and was recorded in Book 17 of Deeds, at page 51, as by reference to said deed, or to a copy thereof hereto attached and marked Exhibit A, and which your orator prays may be taken as a part of this bill with leave to refer thereto, will more fully and at large appear.

And your orator further avers and shows unto your honor that afterwards, to wit, on the first day of March, A. D. eighteen hundred and sixty-nine (1869), the said Henry Clapp and Sarah A., his wife, signed, sealed, executed, and delivered their deed, by which they conveyed to your orator all the said parcel of land hereinabove described, the execution of which said deed was duly acknowledged by the said Henry Clapp and wife, and the said deed was filed for record in said recorder's office on the 30th day of March, A.
829 D. 1869, and was recorded in said office in Book Number 14, at page 547, as by reference to a copy of said deed, hereto attached and marked Exhibit B, will more fully and at large appear.

And your orator further avers that ever since the date of the execution of said deed he has been in the quiet and peaceable possession of all of said lands, either in person or by his tenants, and that he is now the sole legal owner thereof, and that no other person hath any legal or equitable title to said lands or to any part thereof.

And your orator further, upon information and belief, avers and charges the fact to be that during all the time from the time the Government of the United States parted with its title to said lands the said Henry Clapp had been and was, until the date of the making of the said deed by the said Henry to your orator, the equitable owner of all said lands, and had been in the actual occupancy thereof during all said time.

And your orator further, upon information and belief, avers and charges the fact to be that after the said deed so as aforesaid made by the said Edwin Clapp and Mary M. Clapp, his wife, to the said Ruggles W. Clapp, and after the said deed had been by them delivered to the said Ruggles, and after the said deed had been by the said Ruggles filed for record in the said recorder's office and
830 before the same had been recorded in said office, the said deed was, by some person or persons unknown to your orator, abstracted and taken from said recorder's office, and was afterwards, by such person or persons or by some person or persons acting under the instigation of the party or parties who had so abstracted said deed from said office, mutilated and defaced by drawing certain ink lines across and over the signatures of the said Edwin Clapp and Mary M. Clapp.

And now so it is, may it please your honor, that the said Edwin Clapp and Mary M. Clapp neglect and have neglected, tho' often requested, etc., to make, execute, and deliver to the said Ruggles W. Clapp or to the said Henry Clapp or to your orator, grantees as aforesaid, a good and sufficient deed in place of the deed so mutilated and defaced, by means whereof your orator is unable to perfect his title of record to said lands embraced and described in the said mutilated and defaced deed.

All of which is contrary to equity and good conscience and tends to the manifest wrong and injury of your orator in the premises.

In tender consideration of which, and inasmuch as your orator is remediless in the premises at and by the strict rules of the common law and can only have adequate relief in a court of chancery,
831 where matters of this sort are only properly cognizable and relievable, your orator prays that the said Edwin Clapp and Mary M. Clapp be made defendants herein, and that they be summoned personally to be and appear before this honorable court on the first day of the next term thereof, then and there full, true, direct, and perfect answer to make to all and singular the matters and things herein stated or charged or intended so to be, and that as fully and particularly as if each of the same were here repeated and they and each of them distinctly interrogated thereto, but not under oath, the oath of each of said defendants to such answer being hereby expressly waived.

And that on the hearing of this case it be by the court ordered and adjudged and decreed that the title which the said Edwin Clapp had and held in and to the undivided half of the east half of the southwest quarter of section number (28) twenty-eight and the undivided half of the east half of the northwest quarter of section number (33) thirty-three and all of the northeast quarter of section thirty-three, all in township number (21) twenty-one, of range number (11) eleven, in said county of Lee, passed to Ruggles W. Clapp and was vested in him on the twenty-eighth day of November, A. D. eighteen hundred and fifty-five, and that the said deed of said premises so made by the said Edwin Clapp and the said Mary M.
832 Clapp on the 28th day of November, A. D. 1855, to the said Ruggles W. Clapp be admitted to record in the recorder's office of said Lee county with the same effect, to all intents and purposes, as if the signatures thereto had not been defaced.

And that the master in chancery of this county be ordered, directed, and decreed to execute and deliver, on behalf of the said Edwin Clapp and Mary M. Clapp, a good and sufficient deed, conveying to your orator all the right, title, and interest which they had in and to the lands last aforesaid on said 28th day of November, A. D. 1855, subject to any rights which may have subsequently accured in favor of any third person or persons, should any such rights exist.

And that your orator may have such further and other relief in the premises as to your honor shall seem right and as in equity and good conscience he may show himself, in the judgment of this hon-

orable court, entitled to; and as in duty bound your orator will ever pray, etc.

LOT CHADWICK,
By JOHN I. EUSTACE, *Att'y.*

EUSTACE, BARGE & DIXON,
Solicitors and of Counsel for Complainant.

833 STATE OF ILLINOIS, } ss:
County of Lee, }

Lot Chadwick, the said complainant, being duly sworn, on his oath saith that he knows the contents of the foregoing bill, and that the matters and things therein stated as of his own knowledge are true, and as to all the other matters therein stated he believes them to be true.

LOT CHADWICK.

Subscribed & sworn to before me this 13th day of September, A. D. 1869.

ALBERT Z. BODINE, [SEAL.]
Justice of the Peace.

EXHIBIT A.

[On margin:] Filed for record January 30th, 1868. Recorded in Book 17, page 51.

This indenture, made this tenth day of January, in the year of our Lord one thousand eight hundred and sixty-eight (A. D. 1868), between Ruggles W. Clapp and Emily B. Clapp, his wife, of the city and State of New York, and Henry Clapp, of Bradford, Lee county, Illinois, of the second part, witnesseth: That the said party of the first part, in consideration of the sum of one dollar ($1.00), lawful money of the United States of America, in hand paid by the said party of the second part at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have re-
834 mised and quitclaimed, and by these presents do remise and quitclaim, unto the said party of the second part and to his heirs and assigns forever all of the east half of the southwest quarter of section twenty-eight (28), also all of the east half of the northwest quarter of section thirty-three (33), also all of the northeast quarter of section number thirty-three (33), also all of the northeast quarter of the southeast quarter of section thirty-three (33), also all of the west half of the northwest quarter of section thirty-four (34), also all of the northwest quarter of the southwest quarter of section thirty-four (34), in township twenty-one north, range eleven east, of the fourth principal meridian, in the county of Lee, State of Illinois, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest in the said property, claim, and demand whatsoever, as well in law

as in equity, of the said party of the first part of, in, and to the above-described premises and every part and parcel thereof, with the appurtenances:

To have and to hold the same, all and singular the above mentioned and described premises, with the appurtenances, to the said party of the second part, his heirs and assigns forever.

835 In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signed) RUGGLES W. CLAPP. [SEAL.]
EMILY B. CLAPP. [SEAL.]

Sealed and delivered in presence of—

RUGGLES W. CLAPP.
CHARLES NETTLETON.
NATHANIEL GILL.
ORSON M. PEARL.
ALMYRA RYAN.

Attest: E. B. C.

[50-cent rev. stamp, cancelled.]

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Charles Nettleton, a notary public in and for the city and county of New York, State of New York, do hereby certify that Ruggles W. Clapp, who is personally known to me to be the real person whose name is subscribed to the within indenture, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said indenture as his free and voluntary act for the uses and purposes therein set forth, and thereby conveyed all his right, title, and interest to the premises described in said deed, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so called.

Given under my hand and notarial seal this 11th day of Jan-
836 uary, A. D. one thousand eight hundred and sixty-eight (A. D. 186–.)

(Signed) CHARLES NETTLETON,
Notary Public in and for the City and County of New York, State of New York.

STATE OF MASSACHUSETTS, } ss:
Hampshire County, }

JANUARY 20TH, 1868.

Then Emily B. Clapp, within named, personally appeared and acknowledged the within instrument to be her free act and deed, before me—

ORSON M. PEARL,
Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS, *Hampshire,* } *ss:*

Probate Court.

I, Luke Lyman, register of the probate court for said county of Hampshire, the same being a *part* of record, do certify that Orson M. Pearl, Esq., whose signature is affixed to the certificate on the paper hereto annexed, was at the day thereof a justice of the peace, duly commissioned and acting under the authority of this Commonwealth, and that full faith and credit is and ought to be given to his acts and attestations done in that capacity, and that I am well acquainted with the handwriting of the said Orson M. Pearl and believe his signature to said certificate is genuine.

837 In testimony whereof I have hereunto set my hand and affixed the seal of said court this twenty-third day of January, in the year of our Lord one thousand eight hundred and sixty-eight.

[Seal of Probate C't.]

LUKE LYMAN,
Register and Having Custody of the Seal.

[Rev. stamp, .05.]

Filed for record January 31st, A. D. 1868, at 12.20 o'clock p. m.

EXHIBIT B.

[On margin:] Filed for record March 3, 1869, Book 14, page 547.

This indenture, made this first day of March, in the year of our Lord one thousand eight hundred and sixty-nine, between Henry Clapp and Sarah A. Clapp, his wife, of the county of Lee and State of Illinois, party of the first part, and Lot Chadwick, of the county and State aforesaid, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of ten thousand dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents do grant, bargain sell, remise, release, convey, alien, and confirm, unto the said party of the second part and to his heirs and assigns for-

838 ever all the following-described lot, piece, or parcel of land, situate in the town of Bradford, in the county of Lee and State of Illinois, and known and described as follows, to wit:

The west half of the northwest quarter and the northwest quarter of the southwest quarter of section number thirty-four (34), and the northeast quarter of the southeast quarter of section number thirty-three (33), and the northeast quarter of section number thirty-three (33), and the east half of the northwest quarter of section number thirty-three (33), and the east half of the southwest quarter of section number twenty-eight (28); all in township number twenty-one

(21) north, of range number eleven (11) east, of the 4th principal meridian, containing four hundred and eighty acres of land, more or less—

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said part- of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances:

To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

839 And the said Henry Clapp and Sarah A. Clapp, his wife, party of the first part, hereby expressly waive, release, and relinquish unto the said party of the second part, his heirs, executors, and administrators and assigns, any and all right, title, claim, interest, and benefit whatever in and to the above-described premises and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said Henry Clapp and Sarah A. Clapp, his wife, party of the first part, for their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents they were well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law in fee simple, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind and nature soever, and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every other person or persons lawfully claiming or to claim the whole or any part thereof the said

840 party of the first part shall and will warrant and forever defend.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

(Signed) HENRY CLAPP. [SEAL.]
SARAH A. CLAPP. [SEAL.]

Signed, sealed, and delivered in presence of—
ALBERT Z. BODINE.

STATE OF ILLINOIS, } ss:
Lee County, }

I, Albert Z. Bodine, a justice of the peace in and for said county, in the State aforesaid, do hereby certify that Henry Clapp and Sarah Clapp, personally known to me as the same persons whose names

are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

And the said Sarah A. Clapp, wife of the said Henry Clapp, having been by me examined separate and apart and out of the hearing of her husband and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her, and she also by me being fully informed of her right under the homestead laws of this State, acknowledged that
841 she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this first day of March, A. D. 1869.

(Signed) ALBERT Z. BODINE, *J. P.* [SEAL.]

Endorsed: Filed September 14, A. D. 1869. J. N. Hyde, clerk.

842 *Answer of Edwin Clapp to Original Bill.*

STATE OF ILLINOIS, } ss:
Lee County, }

In the Circuit Court, on Chancery Side. Vacation after December Term, A. D. 1869.

LOT CHADWICK
vs.
EDWIN CLAPP and MARY M. CLAPP. } Answer of Edwin Clapp.

The answer of Edwin Clapp to the bill of complaint of Lot Chadwick, complainant.

This respondent, saving and reserving unto himself all manner of advantage or benefit of exception which may be had or taken to said bill of complaint by reason of the manifold errors, imperfections, and uncertainties therein, for answer thereto or to so much and such portions thereof as he is advised by his counsel is or are material for him to make answer unto—this respondent, answering, says—

It is true that on the fourteenth day of October, A. D. 1853, one John F. Clapp was seized in fee of the east half of the southwest quarter of section number (28) twenty-eight and the east half of the northwest quarter of section number thirty-three, all in township number twenty-one, of range eleven east, of the fourth princi-
843 pal meridian, in the county of Lee and State of Illinois, as alleged in bill of complaint.

It is likewise true that on said last-named day said John F. Clapp conveyed said lands to Jason Clapp and this respondent by warranty

deed. It is also true that said deed was filed for record and was afterward recorded on the date, at the place, and in the manner specified in complainant's bill.

This respondent; further answering, admits to be true, as alleged in bill, that on the twenty-ninth day of October, A. D. 1853, one Lewis Clapp was the owner in fee of the northeast quarter of section number thirty-three, in township number twenty-one, of range number eleven east, of the fourth principal meridian, in said Lee county.

It is also true that on said last-named day said Lewis Clapp by warranty deed conveyed said last-named lands to this respondent. It is likewise true that said last-named deed was filed for record and was afterward recorded on the date, at the place, and in the manner specified in complainant's bill.

This respondent, further answering, admits that on the twenty-eighth day of November, A. D. 1855, said Jason Clapp made and delivered a warranty deed to one Ruggles W. Clapp conveying to said Ruggles an undivided half of the east half of the northwest quarter of section number thirty-three and the east half of the
844 southwest quarter of section twenty-eight, all in township twenty-one, range eleven east, of the fourth principal meridian, in said Lee county, together with other lands in said deed described, as stated in said bill of complaint.

Respondent believed until A. D. 1860, as will more fully appear hereafter, that said last-named deed had never been filed for record, and although he has learned that a copy of said deed appears upon the record, as stated by complainant in his bill, yet he reserves the right to show, if he can, by proof that such record is a fraud upon respondent.

This respondent, further answering, say- it is true that on or about the twenty-eighth day of November, A. D. 1855, this respondent and his wife; Mary M. Clapp, did sign, seal, execute, and deliver a certain warranty deed in & by which they conveyed to the said Ruggles W. Clapp all their title in and to the undivided half of certain lands, which lands this respondent believes to be correctly described in that part of complainant's bill stating said conveyance by this respondent and wife to said Ruggles W. Clapp; but inasmuch as respondent has not the possession or custody of nor access to said deed, he prefers to leave the description of the lands embraced therein open to proof.

This respondent is not certain whether said deed was ever
845 filed for record, as stated in said bill. This respondent never had any reason for believing it had been so filed, and never heard of such filing save by complainant's bill; that if said deed ever was so filed for record the same was a gross fraud on this respondent, and he hopes to be able to establish, but inasmuch as complainant has sworn that said deed was so filed for record, respondent does not feel warranted in positively contradicting the same, but insists on complainant's establishing the fact by competent proof.

This respondent, further answering, says that he has no knowledge, save as he has recently been told, of the execution and delivery of

a conveyance of said premises or any part thereof by the said Ruggles W. Clapp to the said Henry Clapp, nor of the execution and delivery of a conveyance from the said Henry Clapp to complainant, as stated in said bill, and therefore denies the same and calls for proof thereof.

Respondent, however, avers that if such conveyances were made they were a gross fraud upon respondent and one Ebenezer Clapp, the father of said Henry and Ruggles W.

Respondent avers that said Ruggles W. Clapp and said Henry Clapp are brothers; that the present wife of said Henry Clapp is the daughter of complainant. Although in the copy annexed to complainant's bill of the pretended conveyance from said Henry Clapp to complainant said conveyance is expressed to be for and in
846 consideration of ten thousand dollars in hand paid—

Yet respondent has been informed, verily believes, and charges the fact to be that such expression of such consideration is a falsehood.

Respondent denies that said complainant is a *bona fide* owner of the real estate in said bill described, but charges that on the contrary said complainant has combined and confederated with said Henry Clapp, his said son-in-law, to defraud respondent of his lawful and just rights and interests in and to said real estate. He also denies that complainant has been in the possession of said premises by his tenants or otherwise; and if complainant has presumed to lease any portion of said premises to any person, his action in that regard was a willful fraud upon respondent.

Respondent, further answering, says he believes it to be true that said Henry Clapp has had some sort of interest in some or all said lands described in said bill ever since the United States parted with the title thereto; yet it is not true that said Henry Clapp has been in the actual occupancy of all or any portion of said lands during all that time, but, on the contrary, this respondent has had possession and control of said lands for several years last past and through his agent has leased the same to various parties, all which respondent believes was well known to complainant when he made the contrary statement in his said bill of complaint.

847 This respondent, further answering, says that if said deed so as aforesaid made, executed, and delivered by respondent and his wife to the said Ruggles W. Clapp was ever left by the said Ruggles for record, and if before said deed had been recorded it was by some person or persons abstracted and taken from the recorder's office and was afterward by such person or persons or by some person or persons acting under the instigation of the party or parties who had so abstracted said deed from said office mutilated and defaced by drawing certain ink lines across and over the signatures of the said Edwin Clapp and Mary M. Clapp in manner and form as charged in said bill—

Your respondent can only say that he has no knowledge on the subject save what is derived from said bill; and as the story is so improbable, he desires the truth thereof and calls for proof.

Respondent, further answering, says that it is not true that he ever

neglected to make, execute, and deliver to said Ruggles W. Clapp, to said Henry Clapp, or to said complainant, a good and sufficient deed in place of the deed so mutilated and defaced as stated in said bill of complaint, nor is it true that it was the duty of respondent to make such deed, as will more fully appear hereafter, nor is it true that said Ruggles W. Clapp, said Henry Clapp, said complainant, any person for them, or any person whatever ever requested
848 respondent to make such deed in place of the deed so mutilated and defaced, notwithstanding said complainant, in his said bill, sworn to by him, positively states that this respondent had been often requested.

Respondent, further answering, says that said Jason Clapp and respondent took the title to said lands, as in said bill and as hereinbefore stated, in trust to secure advances to said Henry Clapp and interest thereon, and that it was understood that whenever said Henry refunded said advances and interest thereon that the title to said lands should be conveyed to said Henry or to whomsoever he might direct.

That at or about the time said Jason Clapp and respondent conveyed said lands to said Ruggles W. Clapp, as in said bill and as hereinbefore stated, said advances and interest thereon were refunded to said Jason and to respondent; whereupon said land, by direction of said Henry Clapp, was conveyed to said Ruggles W. Clapp.

Respondent, further answering, says that some time after the conveyances as aforesaid to said Ruggles W. Clapp and, as near as respondent can recollect, in the month of September, in the year A. D. 1856, said Ruggles W. Clapp redelivered to respondent said conveyances so as aforesaid executed and delivered by said Jason Clapp and by respondent to said Ruggles W., said Ruggles W. stating to respondent at the time of such redelivery of said deeds that
849 they, said deeds, had not been recorded, and that the title to said lands was still in respondent and said Jason Clapp, and that respondent was to hold said deeds, and that said title was to remain in said Jason Clapp and respondent to secure the payment of twenty-six hundred dollars advanced by one Ebenezer Clapp, father of said Ruggles W. and Henry, to said Henry Clapp, which sum said Henry agreed to pay said Jason Clapp and respondent in two years from the eighteenth day of July, A. D. 1856, with interest at the rate of ten per cent. per annum.

Respondent, not doubting the truth of said statements of said Ruggles W., not suspecting that said deeds or either of them had been recorded, and willing to again oblige said parties, accepted said trust and filed said deed among his other papers.

Respondent, further answering, says that during all the time covered by the transactions mentioned in complainant's bill respondent's residence has been in the State of Massachusetts; that he has never been in the State of Illinois; that he never saw the lands in said bill referred to, but always relied implicitly on the statements of said Henry and said Ruggles W. Clapp in reference thereunto and in reference to the title thereof until the year A. D. 1860, when he discovered the intentions of the said Henry and the said Ruggles

W. Clapp to swindle respondent and said Ebenezer Clapp,
850 their father, and that the deed from said Jason to said Ruggles W. had been recorded.

Respondent, further answering, says that some time after the redelivery of said deeds by said Ruggles W. Clapp to respondent, as aforesaid, respondent appointed Mr. Cephas Clapp, of Lee Center, his agent to look after said lands, the rents and taxes thereof; that said agent paid the taxes for this respondent, but the proceeds of said land rents and income said Henry Clapp who, during all the time on or near the land, in some way managed to get hold of and convert to his own use.

Respondent further states that complainant during all this time resided in the immediate neighborhood of these lands; that the fact of respondent's having an interest in said lands was and has been notorious in said neighborhood, and respondent verily believes that complainant had notice of respondent's said interest at the time said complainant accepted said deed, if at all, with a view to aid said Henry Clapp in an attempt to defraud respondent and said Ebenezer Clapp.

Respondent further states that on the third day of November, A. D. 1866, said Henry Clapp asked of respondent a loan of one hundred and thirty-nine dollars on the security of said lands and the title thereto so held by respondent; that to accommodate said Henry, not thinking that said deed of respondent to said Ruggles W. had been filed for record, respondent loaned to said Henry said
851 sum of one hundred and thirty-nine dollars, relying as security therefor on the title which respondent held to said lands, and which sum said Henry Clapp promised to pay, with interest, on demand.

Respondent further states that no part of said sum of one hundred and thirty-nine dollars nor any part of the interest thereon has been paid, nor has any portion of the principal or interest of said sum of twenty-six hundred dollars been paid except the sum of thirty dollars, Oct. 30th, A. D. 1863, and the sum of twenty dollars, Oct. 30th, 1864.

Respondent, further answering, says that in A. D. 1860 he was informed that said Henry Clapp and said Ruggles W. Clapp had told him a falsehood in reference to the recording of said deed so as aforesaid executed and delivered by the said Jason Clapp to the said Ruggles W. Clapp, and which had been redelivered by said Ruggles W. to respondent as aforesaid; whereupon respondent forwarded said deed, also said deed from respondent to said Ruggles W. Clapp, to his said agent, Cephas Clapp, with instructions to him to investigate the matter.

That while said Cephas Clapp was in possession of said deeds said Henry Clapp called at the residence of said Cephas and asked the permission of said Cephas to take said deeds for the purpose of copying them.

That said Cephas refused such permission, but informed said Henry that he could copy them at the house of said Cephas,
852 and thereupon said Henry went away and soon returned with

one A. L. Bodine, a justice of the peace and resident of said Lee Center, and asked for said deeds for the purpose of copying them; said Cephas handed said deeds to said Henry and Bodine for the purpose of copying them, at the house of said Cephas, but with the injunction that they should not be taken away; said Cephas was called out of his house while said Henry and said Bodine were copying said deeds, and on his return discovered that said Henry and said Bodine had left, and that said Henry had taken said deeds with him.

Said Cephas went immediately to the residence of complainant, then and now the father-in-law of said Henry, where he supposed he would find said Henry, for the purpose of taking from him said deeds.

That said Cephas was informed by the family of complainant that said Henry had gone to his home, which was then on said lands in said bill described, but said Cephas was afterward informed by some other person, as the fact was, that said Henry had gone to Dixon and taken said deeds with him.

That said Cephas afterwards demanded a return of said deeds by said Henry to him, but said Henry refused to return either of them, and neither said Henry nor any other person has ever returned said deeds or either of them to said Cephas or respondent
853 nor to any person for them or either of them.

And respondent avers that said deeds were obtained from his said agent by fraud and with a view to defraud respondent and said Ebenezer Clapp, and that the withholding them now from respondent is fraudulent.

Respondent insists that he has a right to a return of said deeds, and if in possession of complainant or his solicitors, as he supposes they are, prays the court to compel them to surrender said deeds to respondent.

Respondent further insists that it was improper to join the said Mary M. Clapp as party defendant in said bill—first, because, as the bill shows, at the time of her execution of the conveyance to said Ruggles W. Clapp she was and still is a married woman, and the relief sought of her could not properly be granted because of her coverture.

And respondent hopes the court will give the same effect to these objections as if they had been presented by demurrer.

Respondent further avers that said Ebenezer Clapp is now living; that he has an interest in the result of this suit and should have been made a party thereto.

Respondent having now answered all and singular the allegations of said bill—without this, that any matter or thing in said bill contained material or necessary for this respondent to make
854 answer unto and not herein well and sufficiently answered, traversed, confessed, avoided, or denied is true to the knowledge or belief of this respondent—prays to be hence dismissed with his reasonable costs most wrongfully sustained.

EDWIN CLAPP.

B. H. TRUESDELL,
Sol'r & Counsel for Respondent.

Endorsed: Filed February 9th, A. D. 1870. J. N. Hyde, clerk.

855 STATE OF ILLINOIS, } ss:
Lee County, }

In Chancery. In the Circuit Court of Lee County, of the June Term, A. D. 1871.

The replication of Lot Chadwick, complainant, to the answer of Edwin Clapp.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto saith that he does and will aver, maintain, and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant; that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All of which matters and things this repliant is ready to
856 aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

EUSTACE, BARGE & DIXON,
Solicitors for Complainant.

Endorsed, to wit: Filed this 22nd day of June, 1871. J. N. Hyde, clerk.

857 *Cross-Bill.*

STATE OF ILLINOIS, } ss:
Lee County, }

In the Circuit Court, to the December Term, A. D. 1870.

EDWIN CLAPP
vs.
LOT CHADWICK *et al.* } In Chancery. Cross-Bill.

To the Hon. William W. Heaton, judge of the 22d judicial circuit of the State of Illinois and of said Lee county circuit court, in chancery sitting:

Humbly complaining, showeth unto your honor your orator, Edwin Clapp, of Pittsfield, Massachusetts, that he is the son of one Jasen Clapp, who for many years prior to his death was a resident of Massachusetts, and who died October twentieth, A. D. 1868; that one Ebenezer Clapp, a resident of Massachusetts, was a brother of said Jasen; that said Ebenezer is the father of one Henry Clapp, a resident of said Lee county, and of one Ruggles Woodbridge Clapp,

and that the wife of said Henry Clapp is the daughter of one Lot Chadwick.

Your orator further showeth unto your honor that on the fourteenth day of October, A. D. 1853, one John F. Clapp conveyed to said Jasen Clapp and your orator the east half of the southwest quarter of section twenty-eight and the east half of the north-
858 west quarter of section thirty-three; that on the twenty-ninth day of October, A. D. 1853, one Lewis Clapp conveyed to your orator the northeast quarter of section thirty-three, all said lands lying and situate in township twenty-one, range number eleven east, of the fourth principal meridian, in said Lee county; that both said conveyances were duly filed for record in the recorder's office of said Lee county on the twenty-ninth day of October, A. D. 1853, and were duly recorded.

Your orator further shows unto your honor that said Jasen and your orator took the title to said lands, as before stated, in trust to secure certain advances of money made by them to said Henry Clapp, and when said advances should be refunded, with the interest, then to convey said real estate to said Henry or to whomsoever he might direct; that on or about the twenty-eighth day of November, A. D. 1855, said Henry refunded said advances, with the interest, and thereupon, at the request of said Henry, said Jasen Clapp conveyed to said Ruggles Woodbridge Clapp an undivided half of said east half of southwest quarter of said section twenty-eight, and an undivided half of said east half of northwest quarter of section thirty-three; also the northwest quarter of the southwest quarter of section thirty-four, the west half of the north-
859 west quarter of said section thirty-four, and the northeast quarter of the southeast quarter of section thirty-three; that all said lands then conveyed by said Jasen to said Ruggles Woodbridge were embraced in one deed; that on or about said twenty-eighth day of November, A. D. 1855, your orator, at the request of said Henry, by one deed conveyed to said Ruggles Woodbridge an undivided half of said east half of the southwest quarter of section twenty-eight; an undivided half of said east half of the northwest quarter of section thirty-three; also the northeast quarter of said section thirty-three, all said lands being situate in said township twenty-one north, range eleven east, of fourth principal meridian, in said Lee county.

Your orator further showeth unto your honor that said Henry Clapp was the equitable owner of all said lands so as aforesaid conveyed by said Jasen and by your orator to said Ruggles Woodbridge; that said Ruggles Woodbridge, as your orator verily believes, at no time had any beneficial interest in said lands nor in any part thereof, but took the title to said lands, as before stated, as a naked trustee for said Henry.

Your orator further showeth unto your honor that afterward, to wit, on or about the eighteenth day of July, A. D. 1856, the said Henry applied to his father, the said Ebenezer, for a loan of twenty-six hundred dollars for two years, with annual interest at ten
860 per cent., and offered as security for said loan said lands so

as aforesaid conveyed by said Jasen and your orator to said Ruggles Woodbridge; that on said eighteenth day of July, A. D. 1856, said Ebenezer loaned to said Henry, on the terms so as aforesaid proposed by him, the said sum of twenty-six hundred dollars; that the said Ebenezer was then, to a very considerable extent, incapacitated for business by infirmities incident to old age, and it was arranged by and between him, said Henry and said Ruggles Woodbridge, that said Jasen Clapp and your orator should receive the securities for said loan as trustees for said Ebenezer; said Henry should make his note for said sum so loaned, payable in two years from its date, to the order of said Jasen and your orator, at the Agricultural Bank, Pittsfield, Massachusetts, with annual interest at ten per cent., and that the said Ruggles Woodbridge should deposit with said Jasen and your orator the deed made by said Jasen, also the deed made by your orator to said Ruggles Woodbridge, as hereinbefore stated, and that said Jasen and your orator should hold said deeds and the title to the real estate therein described to secure the payment of said loan; that said Henry made his note in accordance with said agreement, bearing date said eighteenth day of July, A. D. 1856; that afterwards said note was delivered to your orator,
861 and on or about the twenty-second day of September, A. D. 1856, your orator received from said Ruggles Woodbridge said two conveyances of land—the one made by said Jasen to said Ruggles Woodbridge, the other by your orator to said Ruggles Woodbridge—as hereinbefore stated; that said note and said deeds were delivered to your orator in pursuance of said arrangement that said Jasen and your orator should act as trustees for said Ebenezer.

Your orator, on receiving said note and said deeds and being informed that he and the said Jasen had been selected as trustees for said Ebenezer in said transaction, concluded to act in that capacity and filed said note and said deeds with his other papers.

Your orator further showeth unto your honor that on receiving said deeds he was informed by the said Ruggles Woodbridge that they had not been recorded, and that said return of said deeds left the title to the lands therein described in said Jasen and your orator.

Your orator further showeth to your honor that on the receipt of said deeds and said assurances from said Ruggles Woodbridge your orator had some confidence in the integrity of said Henry and said Ruggles Woodbridge; at least did not then suspect them or either of them of a design or desire to swindle their father, the said Ebenezer; and your orator then believed that neither of said
862 deeds had been recorded, and, not being a lawyer nor deeming it necessary to consult a lawyer, also believed that a redelivery of said deeds, as before stated, did again vest the legal title to the lands therein described in the said Jasen and your orator.

Your orator further shows unto your honor that until on or about the tenth day of December, A. D. 1860, he had no knowledge that either said deed from said Jasen or said deed from your orator to said Ruggles had been recorded; that on said tenth day of December, A. D. 1860, a relative of your orator, residing in said Lee county, gave your orator such information by letter.

Your orator further showeth unto your honor that said Henry Clapp, after your orator had received such information and down to a recent period, from time to time acknowledged his indebtedness to his said father, the said Ebenezer; acknowledged that your orator still held the legal title to all said lands so as aforesaid conveyed by said Jasen and by your orator to said Ruggles Woodbridge in trust to secure the payment of said indebtedness; and your orator, notwithstanding the prior exhibition of bad faith on the part of said Henry and said Ruggles Woodbridge, could not believe that they intended to wholly deceive your orator and rob their father, the said Ebenezer, and hence your orator was again lulled into a feeling of fancied security.

863 Your orator further showeth unto you honor that on or about the ninth day of November, A. D. 1860, he appointed one Cephas Clapp, a resident of said Lee Centre, in said Lee county, his agent to rent said lands, receive the rents, pay the taxes thereon, and to have a general supervision thereof; that said Cephas acted in that capacity from the date of said appointment until or about the time of the conveyance of said lands by said Henry to Lot Chadwick, his father-in-law, hereafter to be more fully stated.

That said Henry acknowledged the said authority of said Cephas in reference to said lands; but while he allowed to said Cephas a general supervision of said lands, the payment of taxes thereon, and the making of repairs, yet the said Henry managed, in one way or another, to receive to his own use nearly all the rents and profits of said land.

Your orator further showeth unto your honor that on or about the first day of April, A. D. 1864, he sent to his said agent, the said Cephas, said deed so as aforesaid made by the said Jasen to the said Ruggles, likewise said deed so as aforesaid made by your orator to said Ruggles, that the said Cephas might be the better able to protect the interest your orator held in said lands in trust for said Ebenezer as aforesaid.

Your orator further showeth unto your honor that on the third day of November, A. D. 1866, said Henry visited your orator,
864 at Pittsfield, Massachusetts, and while there represented himself in great need of money, and begged of your orator a small loan; that your orator at that time loaned said Henry one hundred and thirty-nine dollars, taking the note of said Henry, payable to Jasen Clapp & Son, at their office, on demand for said sum, with interest, and also a verbal agreement from said Henry that your orator should retain said deeds as security for the payment of that sum also.

Your orator further shows unto your honor that no part of said sum has been paid, and that there is now due on account thereof the sum of one hundred and seventy-two dollars. Your orator also shows that no part of said sum so loaned by said Ebenezer to said Henry has been paid, except the sum of thirty dollars October 30th, A. D. 1863, and the further sum of twenty dollars, October 30th, A. D. 1864, and that there is now due on account of said loan the sum of six thousand two hundred and seventy-six dollars.

Your orator further shows that the money advanced by him from time to time in payment of necessary repairs on said lands so held by him in trust as aforesaid and of the taxes assessed thereon during the time he has so held the same in trust amount, over and above all rents and profits received by your orator, to the sum of one hundred dollars, as nearly as your orator can now state the same.

865 Your orator further showeth unto your honor that said Jasen Clapp, to accommodate his nephews, the said Henry and the said Ruggles, and his brother, the said Ebenezer, simply allowed the use of his name in said trust, but never otherwise participated in said trust, and that all the active duties thereof devolved on and were performed by, so far as performed at all, your orator.

Your orator further showeth unto your honor that afterward the said Henry and the said Ruggles attempted a scheme to deprive your orator and said Ebenezer of all interest in said lands. In pursuance of said plan said Ruggles, on or about the tenth day of January, A. D. 1868, signed and acknowledged a blank form for the conveyance of lands and delivered the same to said Henry; that in said form, when received by said Henry, was no description of any lands whatever, nor did said form contain the name of any grantee; that after said Henry received said form he or some person by his procurement and without the consent of said Ruggles inserted therein the name of said Henry as grantee and the description of the same lands contained in said deed from said Jasen to said Ruggles and in the deed from your orator to said Ruggles as aforesaid, and on the 30th day of said month of January left said deed thus filled up for record and procured the same to be recorded by

866 the recorder of said Lee county, in Book Seventeen of Deeds, at page fifty-one.

Your orator further showeth that in further pursuance of said plan said Henry, on or about the first day of February, A. D. 1868, called on said Cephas and asked permission to take said deed from said Jasen to said Ruggles and from your orator to said Ruggles, pretending at the same time a desire to copy them and saying to said Cephas that he wished said copies to enable him to make out a conveyance of all said lands to your orator so that there might be no question in reference to your orator's title thereto; that said Cephas refused said request, but informed said Henry that he could copy said deeds at the house of said Cephas, but under no circumstance would he be allowed to take them away; that said Henry thereupon left, soon returning with a justice of the peace, and again asked for said deeds for the purpose of copying them. Said Cephas thereupon handed said deeds to said Henry and said justice for the purpose of copying, but with the injunction that they should not be taken away. Said Cephas was called out of the house, and on his return discovered that during his absence said Henry and said justice had left, said Henry taking both said deeds with him. Said Cephas then hastened to the residence of Lot Chadwick, but a few rods distant, and where said Henry spent much of his time,

867 for the purpose of retaking said deeds from said Henry; that

he was then informed by some member of said Chadwick's family that said Henry had gone to his home, which was then on said lands, but the fact was that said Henry had hastened to his attorneys, taking said deeds with him. Said Cephas afterward demanded of said Henry a return of said deeds, but said Henry has never yet returned either of them and refuses so to do.

Your orator further showeth unto your honor that in the further prosecution of said plan said Henry Clapp and his wife, the daughter of said Lot Chadwick, on the first day of March, A. D. 1869, executed to said Lot Chadwick a pretended conveyance of all said lands described in said deed from said Jasen to said Ruggles and in said deed from your orator to said Ruggles for the pretended consideration of ten thousand dollars; which said pretended conveyance was, on the third day of March, A. D. 1869, filed for record by the recorder of said Lee county and recorded in Book Number Fourteen of Deeds, at page 547, in the office of said recorder; that since the execution of said pretended conveyance to said Lot Chadwick he and the said Henry have assumed the control of said premises and have received the rents and profits thereof, to the entire exclusion of your orator and his agent, the said Cephas.

Your orator further showeth unto your honor that to con-
868 summate said plan said Lot Chadwick, on the fourteenth day of September, A. D. 1869, filed in this honorable court his bill in chancery, making your orator and his wife, Mary M. Clapp, defendants therein; that said bill, among other things, states said conveyance from said Jasen to said Ruggles; the conveyance from your orator to said Ruggles; states said form of conveyance so as aforesaid signed and acknowledged by said Ruggles and delivered to said Henry and by said Henry filled up by inserting his name as grantee and by inserting a description of said lands therein as a conveyance of said premises by said Ruggles to said Henry; states said pretended conveyance by said Henry and his daughter, Sarah A., wife of said Henry, to him, and claims that he thereby received the title to the premises therein described; states that ever since the date of said last-named deed he has been in the possession of all of said lands, and that he, said Chadwick, is the sole legal owner thereof. He further avers and charges in his said bill that said Henry had been the equitable owner of all said lands from the time the United States parted with its title thereto until the date of said pretended conveyance to him. Said Chadwick in and by said bill, upon information and belief, further avers and charges that said deed made by your orator and his wife to said Ruggles had been by said Ruggles filed for record in the said recorder's office; that before it had been recorded it was by some
869 person or persons unknown taken from said office and was afterward by some person mutilated and defaced by drawing certain ink lines across and over the signatures of your orator and of your orator's wife. Said Chadwick in and by his said bill prayed an answer from your orator and said Mary, but waived their oaths thereto; prayed the court to decree that all the title of your orator in and to the lands described in your orator's said deed to said

Ruggles be held to have passed to said Ruggles and vested in him on the twenty-eighth day of November, A. D. 1855; that said deed from your orator to said Ruggles be admitted to record with the same effect as if the signatures thereto had not been defaced; that the master in chancery be ordered to execute and deliver on behalf of your orator and the said Mary a deed conveying to said Chadwick all the right, title, and interest which your orator and said Mary had in and to said lands on said twenty-eighth day of November, A. D. 1855, and for such further and other relief as he might be entitled to.

Your orator further showeth unto your honor that on the ninth day of February, A. D. 1870, he filed his answer, good and sufficient, to said bill so filed by said Chadwick.

Your orator further showeth unto your honor that the pretence of said Chadwick that he is the owner of said lands is untrue;
870 but your orator avers and charges the fact to be that said Chadwick accepted said conveyance from his said son-in-law, the said Henry, and from his said daughter, the said Sarah A., solely for the purpose of enabling the said Henry to defraud the said Ebenezer Clapp and your orator of the monies said Henry justly owed them; that for at least thirteen years immediately preceding the date of said pretended conveyance to said Chadwick he had resided within three miles of said lands, and had for the same period resided within ninety rods of the residence of said Cephas Clapp, the agent of your orator as aforesaid; that the interest of your orator and of said Ebenezer Clapp in and to said lands by reason of said Cephas having the general supervision thereof, leasing the same, making repairs, paying the taxes assessed thereon, as the agent of your orator, and for other reasons was notorious, well known, and understood in the immediate neighborhood of the residence of said Chadwick at and long prior to the date of said pretended conveyance to said Chadwick, and could but have been known and was known by said Chadwick at the time he accepted said pretended conveyance; that the fact said Cephas had possession of said deeds as the agent of your orator, and that said Henry obtained their possession by the use of falsehood and deception, as herein-
871 before stated, was all well known to said Chadwick before he accepted said conveyance.

Your orator further showeth unto your honor that he does not know whether said deed from your orator to said Ruggles was ever filed for record nor whether it was ever defaced by drawing ink lines over the names of your orator and his said wife, Mary, as charged and stated in said bill of complaint filed by said Chadwick, as before stated, but your orator avers that there is no record of said deed in said recorder's office, and insists that had said Henry at the date of said pretended conveyance to the said Chadwick been in possession of said deed and the said Chadwick ignorant of the means used by him to obtain it, yet if, as stated by said Chadwick in his said bill, said deed had been defaced by drawing ink lines over the names of the grantors therein, such defacement was sufficient notice to said Chadwick that your orator had not intended to part with, and

had not actually parted with, his legal title to the land described therein, and that said Chadwick should, before accepting said conveyance from said Henry, have inquired of your orator concerning the matter.

Your orator further showeth unto your honor that he has been informed, verily believes, and so charges the fact to be that said Chadwick did not pay to said Henry, nor has he paid to any
872 person for said Henry, the consideration specified in said pretended conveyance from said Henry to said Chadwick, nor any considerable portion thereof; that since the date thereof the said Henry has resided on the lands therein described, has exercised authority and control over the premises and over the tenants occupying the same, and has received at least a considerable portion of the rents and profits of said land since the date of said Chadwick's pretended purchase; that said Chadwick is at least seventy-eight years of age, quite infirm, and leaves to said Henry the management of said lands, and your orator charges that the said Henry Clapp is as much now as ever the equitable owner of said lands.

And your orator submits to your honor that the facts hereinbefore stated show that your orator has a lien, in the nature of an equitable mortgage, on all the land described in said conveyance from said Jasen to said Ruggles and in said conveyance from your orator to said Ruggles for the payment of the amount now due on said loan by said Henry of said Ebenezer; also for the amount now due on said loan by said Henry of your orator; likewise for moneys, with interest thereon, advanced from time to time by your orator in payment of the taxes assessed on said lands and of necessary improvements made thereon.

And your orator had well hoped that neither the said
873 Henry Clapp nor the said Lot Chadwick would have denied the aforesaid just and equitable claims of your orator, nor attempted to defeat the enforcement of the same, but now so it is, may it please your honor, the said Henry Clapp and the said Lot Chadwick have combined and confederated together for the purpose of defeating the collection of said claims of your orator, and to that end the said Henry fraudulently took said deeds from the residence of said Cephas as before stated, made the said pretended and fraudulent conveyance to the said Lot Chadwick as before stated, and the said Chadwick filed said bill, in it setting up the pretence that he is the owner of said lands and a variety of other pretences, as hereinbefore stated; all which said pretences are false and unfounded, and which said bill is still pending in this court.

In tender consideration whereof, and inasmuch as your orator has no adequate remedy at law and cannot have complete justice without the aid of a court of equity:

To the end, therefore, that justice may be done, your orator prays that the said Ebenezer Clapp, the said Henry Clapp, the said Lot Chadwick, may be made parties defendant herein; that a summons issue out of and under the seal of this honorable court, directed to the said Ebenezer Clapp, the said Henry Clapp, commanding them

and each of them, under a certain penalty therein to be speci-
874 fied, personally to be and appear before this honorable court at the next term thereof, and then and there to answer all and singular the matters and things herein charged, but the oath to the answer of each and every of said defendants is hereby expressly waived; that the said Lot Chadwick be required to answer this the cross-bill of your orator, agreeably to the statute in such case made and provided, but not on oath, the oath of said Chadwick to his said answer being hereby expressly waived, and that each and every of said defendants be required to perform and abide by such order and decree herein as to your honor shall seem meet, agreeable to equity and good conscience.

And your orator further prays that he may be decreed to have a lien in the nature of an equitable mortgage on all said lands so as aforesaid conveyed by said Jason Clapp to said Ruggles Woodbridge Clapp; also on all said lands so as aforesaid conveyed by your orator to said Ruggles Woodbridge Clapp to the amount of said indebtedness from said Henry to said Ebenezer Clapp, and of said indebtedness from said Henry Clapp to your orator, and of said money so as aforesaid disbursed by your orator in payment of the taxes assessed on said premises and of repairs and improvements put on said premises; that said Henry Clapp or said Lot Chadwick or both of them be decreed to pay said sums within a reasonable time from the date of said decree, and that in default thereof the said
875 lands or so much and such parts thereof as may be necessary for that purpose be sold to satisfy that amount and all costs attending this suit by the master in chancery of this court, according to the law and the practice of this court; that it be further provided that at such sale either of the parties to this suit may be a bidder; that in default of redemption, in accordance with the statute in such case made and provided, the purchaser or purchasers at said sale or his or their assign or assigns shall be entitled to a deed from said master, and that each and every of said defendants and every person claiming by, from, through, or under them or either of them be forever barred and foreclosed from asserting any right, title, interest, or claim in and to any portion of said premises so sold; that it be further decreed that the record of said conveyance from said Jason Clapp to the said Ruggles Woodbridge Clapp, said pretended conveyance from said Ruggles Woodbridge to the said Henry Clapp and the record thereof, the said pretended conveyance from the said Henry to the said Lot Chadwick and the record thereof, be declared null and void and henceforth to be for naught held; that it be further decreed that said Lot Chadwick surrender to your orator said deed from said Jason to said Ruggles Woodbridge Clapp and said deed from your orator to said Ruggles Woodbridge Clapp; that said Lot Chadwick be decreed to
876 pay the costs of this suit, and that your orator may have such further, other, or different relief as to your honor shall seem meet; and, as in duty bound, your orator will ever pray.

EDWIN CLAPP.

B. H. TRUSDELL,
Sol. & Counsel for Compl't.

Endorsed, to wit: Filed November 9, 1870. J. N. Hyde, clerk.

877 *Answer of Lot Chadwick to Cross-Bill.*

In the Circuit Court of Lee County. In Vacation after December Term, A. D. 1870.

STATE OF ILLINOIS, } ss:
County of Lee, }

LOT CHADWICK
vs.
EDWIN CLAPP *et al.* } In Chancery.

The answer of Lot Chadwick to the cross-bill filed herein by Edwin Clapp.

This respondent, now and at all times saving and reserving to himself all and all manner of exceptions to the manifold errors and uncertainties in the said cross-bill contained, for answer thereunto or unto so much thereof as he is advised it is material and necessary for him to make answer to, answering, says—

That he admits it to be true that the said Edwin is the son of one Jason Clapp, who for many years lived in the State of Massachusetts and who is now dead, but whether the date of his death is correctly stated in said cross-bill this defendant is not advised.

That he admits that one Ebenezer Clapp, who lived at Lee Center, in said Lee county, about the year A. D. 1856 and for several years last prior thereto, and who is now, as respondent believes, a
878 resident of Massachusetts, was a brother of said Jason and is the father of the said Henry Clapp and of the said Ruggles W. Clapp named in said cross-bill, and that the wife of the said Henry is the daughter of this respondent.

And as to the statement in said bill as to certain conveyances said to have been made by John F. Clapp to Jason Clapp and Edwin Clapp and by Lewis Clapp to Edwin Clapp on October 14th, 1853, and October 29th, 1853, this respondent saith that he believes said statements to be true, but that he hath no further knowledge or information on the subject save what is derived from the said bill and from the records in the recorder's office in said county.

And as to all the statements in said bill in reference to the purposes for which it is alleged that said conveyances were made, and as to any trusts thereby said to have been intended to be created, and as to any alleged advances of any money to said Henry Clapp made by the said Jason and Edwin or by either of them, and as to whether said advances were repaid, as stated in said bill, this respondent saith that he has no knowledge, but that he had been informed and believes that said lands were always, up to the time that this respondent purchased them as hereinafter stated, equitably the property of said Henry Clapp, and that this respondent had been informed and believed and still believes that the said Henry, at the

time the said Jason and Edwin took said conveyances, was
879 financially involved, and that they, the said Jason and Edwin, took and held said lands in trust for the said Henry, and that they — the said lands to be conveyed to the said Henry upon request or to such person or persons as he might designate.

And as to the statements in said bill to the effect that on or about the 28th day of November, A. D. 1855, the said Henry refunded the said advances, and that thereupon, at the request of the said Henry, the said Jason conveyed to the said Ruggles Woodbridge Clapp all the said lands which had been so held by the said Jason, and that all said lands were described in and were conveyed by one deed, and that on or about said date the said Edwin, at the request of said Henry, conveyed to said Ruggles all the said lands which had been so held by the said Edwin, this respondent, answering, saith that he believes it to be true that said conveyances were so made, and at the request of the said Henry; and as to the statement in said bill to the effect that the said Henry was the equitable owner of said lands, and that said Ruggles Woodbridge Clapp took the said title in trust for the said Henry, this respondent saith that, as he has been informed and believes, the said statements are true, and saith that, as he is informed and believes, the said conveyances were made by the said Jason and the said Edwin for the
880 purpose of enabling the said Ruggles to execute a mortgage upon them to one — McLean, of the city of New York, to secure to him the payment of a certain debt for about seven thousand dollars, about to be contracted for goods to be bought of him, for the benefit of said Henry, in the name of the said Ruggles, and that the said Jason and Edwin, at the time they made said conveyances, well knew that they were made for that purpose, and that said stock of goods was purchased and a store opened in Amboy, in said Lee county, for the sale of them in the name of the said Ruggles, but really for the benefit of the said Henry.

And as to all the statements in said bill contained as to the said Henry on July 18, 1856, applying to his father, the said Ebenezer, for a loan of $2,600, and offering said lands as security for the repayment thereof, and as to the said loan being made, and as to any alleged arrangement that the said Jason and the said Edwin should receive the securities for such loan, and that a note should be made by said Henry, and that said Ruggles should deposit with the said Jason and Edwin the two said deeds so made by the said Jason and the said Edwin for the said Jason and Edwin to hold as a security for said loan, and that said arrangements were carried into effect, and as to all the statements in reference thereto, this defendant saith that he is not informed, and he therefore de-
881 nies each and all of the same, and puts the said complainant upon strict proof thereof.

And as to whether said deeds were ever delivered by the said Ruggles to the said Jason and Edwin, and as to what the said Ruggles said or the said Edwin believed, this respondent has no knowledge or information, and therefore denies all of the same; but this respondent saith that the said deed from the said Edwin

Clapp to the said Ruggles W. Clapp was filed for record in the recorder's office, in the said county of Lee, on the fifth day of December, A. D. 1855, and the fees for recording the same were then and there paid the said recorder, and the said recorder then and there wrote and endorsed upon said deed the following words, to wit:

"STATE OF ILLINOIS, } ss:
"*Lee County*, }

"This instrument was filed for record Dec. 5, A. D. 1855, and recorded in Book — of Deeds, page —.
"Due R. W. Clapp 50c.
"P'd & rec't given."

And the said deed from the said Jason Clapp to the said Ruggles W. Clapp was also filed for record in said office on said day, and the fee for recording the same was then and there paid to the said recorder, and the said recorder then and there wrote and endorsed upon said deed the following words, to wit:

882 "STATE OF ILLINOIS, } ss:
"*Lee County*, }

"This instrument was filed for record Dec. 5, 1855, and recorded in Book M of Deeds, page- 525 & 526.
"P'd & rec't given."

And respondent avers that said deed was so recorded in Book M of Deeds, and that the said certificates were endorsed upon said deeds at or about said fifth day of December, A. D. 1855, and were so upon said deeds at the time that the said complainant in his said cross-bill says they were returned to him by the said Ruggles, and the said certificates were then and there notice to him, the said complainant, of everything contained therein.

And respondent saith that if it be true, as said Edwin states in said cross-bill, that he had no actual knowledge until the 10th day of December, A. D. 1860, that said deeds or either of them had been recorded, then his ignorance of said facts was the result of his own carelessness and negligence and of his failure even to read said certificates.

And as to the statements in said cross-bill contained to the effect that said complainant, Edwin, had on or about November 9th, 1860, appointed one Cephas Clapp, a resident of Lee Centre, in said Lee county, his agent in reference to said lands, and that he acted in that capacity until about the time that this respondent bought
883 them of the said Henry, this respondent saith that he knows nothing about any such employment or agency or about any actions of said Cephas further than that he had been informed that for a while the said Cephas seemed to have some concern with the affairs of said farm, but that, as respondent always believed, the connection therewith of the said Cephas was at the instance of the said Henry and for the purpose of carrying out the designs here-

inbefore referred to and to which, as this respondent has been informed and believes, the said Edwin was a party, namely, to prevent the said lands or the products thereof from being taken by the said Henry's creditors against his consent; but this respondent avers that during the whole year before the date of this respondent's purchase of said property the said Cephas had, as respondent verily believed then and now believes and so avers the truth to be, ceased to have any apparent interest in or concern with said property, but, on the contrary, during all said time the said Henry lived thereon, as he had indeed done for many years prior thereto and from the date of said original conveyances to the said Jason and Edwin, and seemed to be and was in the exclusive management and control thereof; and this respondent had no reason to know or to believe and did not know or believe at the time of his purchase that the said Cephas either had or pretended or claimed to have any interest in or connection with said prop-
884 erty in any way, shape, or manner whatever.

And as to the statement in said cross-bill to the effect that said Edwin, about April 1, 1864, sent to said Cephas the said two deeds so as aforesaid made by said Jason and said Edwin, "that the said Cephas might be better able to protect" said Edwin's interest, this respondent saith that he hath no knowledge or information, and he therefore denies the same, but he saith that he is unable to perceive in what way the possession by said Cephas of deeds conveying away the title of the said Edwin and the said Jason would make him better able to protect their interests.

And as to all the statements in said bill in reference to an alleged loan by the said Edwin to the said Henry on Nov. 3, 1866, of one hundred and thirty-nine dollars, this respondent saith that he is not informed and therefore denies all of the same.

And as to whether, if the said Ebenezer ever loaned any money to said Henry, there remains due thereon $6,276 or any other sum this defendant is not informed, and he therefore denies all of the same; but this respondent saith that he is informed and believes and so avers the fact to be that the said Ebenezer has relinquished and released all claims whatever that may have been at any time due and owing to him from the said Henry, and that the attempts made in this case to enforce any alleged rights on behalf of the said Ebenezer is made without the knowledge or consent of
885 the said Ebenezer.

And as to the statement that there is due to said Edwin the sum of one hundred dollars for necessary repairs on said lands" and for taxes thereon paid by him, this respondent saith that he has no knowledge or information save as is stated in said bill, and he therefore denies that the same is true.

And as to the statements that said Jason never took any active part in the matters stated and referred to in said cross-bill, this respondent does not know, but he believes that the same may be true.

And as to the statements in said cross-bill in reference to the making of a deed by the said Ruggles W. Clapp to the said Henry Clapp, on or about the 10th day of January, 1868, and that said

deed when acknowledged had no grantee's name therein nor any description of property recited therein, and that said blanks were filled after delivery, and all the statements connected therewith, this respondent saith that he denies each and all of the same; and he saith that he has in his possession, as a part of his chain of title to said lands, a deed therefor made by the said Ruggles to the said Henry, and which came into his possession after the same had been recorded and after your respondent had purchased said lands; that said deed is regular and sufficient upon its face and shows no signs of
886 any such alterations or fillings up, and that if any change was made in said deed after its delivery it was made without the knowledge of this respondent and before he purchased said lands; and respondent admits that said deed was recorded in the recorder's office in said county of Lee, on January 30, 1868, in Book 17, at page 51.

And as to all the statements in said cross-bill contained as to the manner in which it is therein alleged that the said Henry obtained possession of said two deeds from the said Cephas or as to whether he ever obtained them from the said Cephas this respondent saith that he is not informed, and he therefore denies all of the same; but as to that portion of said statements in which it is averred that the said Cephas came to the residence of this respondent in search of said Henry and of the said deeds this respondent denies that the said Cephas ever came to him on said errand, and as to whether he ever saw any other person at respondent's house in reference thereto this respondent has no knowledge, but on information he denies the same; but he saith that if any such things occurred they were matters which at the time in no way concerned him, and to which, if they happened, he paid no attention; that when he bought said lands he had never seen said deeds and knew nothing as to how or under what circumstances they had come into said Henry's possession or whether he had the possession of them at all.

887 And as to the statements in said cross-bill contained in reference to the purchase of said lands by this respondent of and from the said Henry, this respondent saith that it is true that the said Henry and his wife did, on the first day of March, A. D. 1869, execute and deliver to your respondent a deed conveying to him all said premises for the consideration of ten thousand dollars, as expressed in said deed, and that said conveyance was on the 3d day of March, 1869, filed for record in the recorder's office in said county of Lee, and was duly recorded in Book Number 14 of Deeds, at page 547; but this respondent denies that the same was "a pretended" conveyance or that it was made for a "pretended" consideration, and avers that the said conveyance was made in good faith, and that he paid for said premises the full sum of ten thousand dollars, as stated in said bill and as hereinafter more particularly set forth.

And as to the statement that since the execution of said conveyance this respondent and the said Henry have assumed the control of said premises and have received the rents and profits thereof to the exclusion of the said Edwin and of the said Cephas, this re-

spondent denies all of the same, but saith that since the execution of said conveyance this respondent has assumed the control of said premises and has received the rents and profits thereof to the
888 exclusion of everybody, and that until the filing of said cross-bill this respondent had no knowledge or information that the said Edwin claimed any right thereto, and as to the said Cephas he has never pretended to have any, so far as respondent knows.

And this respondent admits that he did file his bill in chancery, as in the said cross-bill stated, in this honorable court, praying therein as in said cross-bill recited, and that said complainant, Edwin, was made one of the defendants in said bill and filed his answer thereto, and that said cross-bill is filed in said cause.

And as to the statements in said cross-bill to the effect that said conveyance by the said Henry to this respondent was made for the purpose of enabling the said Henry to defraud the said Ebenezer and the said Edwin, this respondent denies the same.

He denies that he had lived for the last thirteen years within three miles of said land, but admits that for that period he had lived within about four miles, by the ordinarily travelled roads, from the same; but he saith that he never was on or saw said lands until about the time of his said purchase.

He admits that for a long period he had lived within about ninety rods of the residence of said Cephas Clapp, but he denies that he knew of any interest being claimed by said Ebenezer or said Edwin in said lands by reason of the said Cephas having anything to
889 do therewith, and he denies that by reason of anything done by the said Cephas it was notorious in the neighborhood or known by respondent that said Cephas in anyway represented said Ebenezer or said complainant, so far as their claiming any interest in said lands was concerned.

And he denies the statement in said bill to the effect that the alleged fact that said Cephas ever had possession of said deed, or that said Henry obtained possession thereof in the manner specified in said cross-bill at the time he purchased said lands and received the said conveyance from the said Henry.

And he denies that at the time he made said purchase and received said conveyance he had any knowledge or information as to any defacement and mutilation of the two said deeds or of either of them, but he saith and will prove, as this honorable court may direct, that when negotiating for the purchase of said lands he was shown a certain certificate of title made and dated on December 5th, A. D. 1885, signed by Isaac S. Boardman, who was at the date of said certificate recorder of deeds in and for said county; by George Hudson, who was then and there deputy of the said Boardman, which certificate recited that on that day *they* were filed in said office "two deeds from Jasen Clapp and Edwin Clapp respectively to Ruggles W. Clapp," conveying the said lands, and that the said lands were, "as appears from the records of deeds and mortgages in my office, free from incumbrance;" and it was then
890–900 stated to this respondent that the two said deeds were in the office of the attorney of said Henry Clapp, at Dixon,

in said Lee county, and respondent was further shown the said said deed from the said Ruggles W. Clapp to the said Henry; and respondent well knew that the said Henry had been for many years in the actual possession of said lands, and, as respondent supposed and believed, since the date of the said deed from Ruggles he, the said Henry, was in possession claiming to be the owner thereof, and respondent then and there further knew that there were then in existence judgments on which executions had been issued and said lands levied on; that one of said judgments was in a case where said lands had been attached as the property of the said Ruggles prior to the time of the filing of the said deed from Ruggles to Henry for record and others were against the said Henry; and respondent knew that as a part of the purchase-money he was to pay off said judgments, as hereinafter set forth.

For all these reasons this respondent then and there believed the said Henry to be the legal and equitable owner of said lands at the time of said purchase.

And as to the statement in said cross-bill to the effect that this respondent did not pay the consideration specified in said deed nor any considerable portion thereof, this respondent denies all of the same, and saith that he did pay the sum of ten thousand
901 dollars for said land, being the full consideration named in said deed; and he further saith that he paid the same in the manner following, to wit:

1869.		
Mar. 1.	He paid cash in hand (bonds)	$2,150 00
" "	for stamps & making deed	11 00
" "	execution, E. L. Clapp *vs.* R. W. Clapp	760 80
" "	two judgments, Emerson *vs.* Henry Clapp	244 28
	Carried forward	$3,166 08
	Amount bro't forward	3,166 08
	He paid execution, H. Chase *vs.* Henry Clapp	125 12
		$3,291 20

He also, at that time, surrendered to said Henry Clapp certain notes which this respondent then held against him, and all of which were justly due and payable, as follows:

One note of date Oct. 15th, 1866	$1,500 00
Interest on the same, then due	375 25
One note dated March 1, 1867	40 00
Interest on the same	8 00
One note dated Dec. 20, 1867	3,156 00
Interest on the same	375 21
One note dated June 1, 1868	304 00
Interest on the same	22 80

One note dated Jan'y 1, 1869	350 00	
Interest on the same	4 17	
Total notes & interest		6,035 43
In all, as above		9,326 63

902 He paid at request of said Henry taxes on said lands as follows:

Part of back taxes for 1867 & 1868, paid to J. T. Little, Co. treasurer	$170 50	
For redemption from tax sale	200 00	
		370 50
		$9,697 13
And as to the balance, namely		302 87

he agreed with said Henry to pay certain other debts and to pay his orders, and he saith that said balance was so by him paid in full.

And so he saith that he has fully paid the said sum of ten thousand — as the consideration money for the purchase of the said lands.

And he further saith that the said sum of $2,150.00, paid down at the time of said purchase and called cash, was paid in negotiable bonds issued by Lee county and by other corporations, and then of the actual cash value.

And he further saith that at the time of said purchase he held all of the notes as specified, as aforesaid, made by the said Henry Clapp, and at the same time all said lands had been levied upon by the sheriff of said county by virtue of the said judgment in the case of Ebenezer Lee Clapp against Ruggles W. Clapp and were then advertised by said sheriff for sale, and the other judgments above referred to were liens upon said property as the property of said Henry, and the plaintiffs in all of them were pressing for their pay.

And the said Henry was not able otherwise than by the sale of said lands to satisfy them and had no other means of paying
903 this respondent.

Respondent therefore was obliged to make said purchase or to lose his debt; and he saith that said purchase was made by him for that purpose and in good faith, and that he then believed that said Henry was legally and equitably the owner of said lands, and he, this respondent, had no knowledge or information or reason to suppose that the said Edwin Clapp either had or pretended to have any control therein whatever.

And as to the statement in said cross-bill to the effect that since the date of the said sale the said Henry has resided on said lands and exercised control over the same and over the tenants, and has received a portion of the rents, and that this respondent is at least seventy-eight years of age and very infirm and leaves the management of said lands to said Henry, and that said Henry is now as

much as ever the equitable owner thereof, this respondent, answering, saith that it is true that the said Henry has resided on said lands, but that it is not true that he has exercised any control over the same or over the tenants, save while acting for your respondent as hereinafter stated; that it is true that this respondent is advanced in years and is incapacitated for the personal charge or supervision of all said lands in connection with the management of his other affairs, and he saith that the said Henry is the husband of
904 this respondent's daughter; that the said Henry and his wife have no other home; that the said Henry's habits and mode of life have been at times reckless and improvident, and that for the purpose of furnishing a home for respondent's daughter and *his* said husband this respondent permitted them to continue to live on said land, and the said Henry has to a certain extent had the supervision of some of the affairs connected therewith, but simply for the purpose of looking after your respondent's interest in the crops raised by the various tenants on said lands; but this respondent denies that the said Henry has any right, title, or interest in said land, either legal or equitable.

And this respondent, further answering, denies that the said Edwin Clapp has or is entitled to have any equitable interest in said lands or in any part thereof.

And this respondent saith that the said complainant in his said cross-bill hath not shown himself entitled to the relief therein prayed for, and prays that respondent may have the same benefit of exception as if he had especially demurred thereto.

And respondent —all and all manner of unlawful confederacy wherewith he is in the said cross-bill charged; without this, that any other matter or thing in the said cross-bill stated or charged and not herein and hereby well and sufficiently denied or traversed or confessed and avoided is true to the best of his knowledge, information, or belief; and, having fully answered, this respond-
905 ent, as to the said cross-bill, prays to be hence discharged with his reasonable costs by him in this behalf most wrongfully sustained.

LOT CHADWICK.

EUSTACE, BARGE & DIXON,
Sol's and of Counsel for Def't Chadwick.

Endorsed: Filed February 27th, A. D. 1871. J. N. Hyde, clerk.

906 *Answer of Henry Clapp to Cross-Bill.*

In the Circuit Court of Lee County. In Vacation after December Term, A. D. 1870. In Chancery.

STATE OF ILLINOIS, } ss:
County of Lee, }

LOT CHADWICK
vs.
EDWIN CLAPP *et al.*

The answer of Henry Clapp to the cross-bill filed herein by Edwin Clapp.

This respondent, now and at all times saving and reserving to himself all and all manner of exceptions to the manifold errors and uncertainties in the said cross-bill contained, for answer thereunto, or unto so much thereof as he is advised it is material and necessary for him to make answer to, answering, says—

That he admits it to be true that the said Edwin is the son of one Jason Clapp, who for many years lived in the State of Massachusetts and who is now dead, but whether the date of his death is correctly stated in said cross-bill this defendant is not advised.

That he admits that one Ebenezer Clapp, who lived at Lee Centre, in said Lee county, about the year A. D. 1856, and for several years last prior thereto, and who is now, as respondent believes, a
907 resident of Massachusetts, was a brother of said Jason, and is the father of this respondent and of the said Ruggles W. Clapp named is said cross-bill, and that the wife of the said respondent is the daughter of the said Lot Chadwick.

And this respondent admits that one John F. Clapp did convey to said Jason Clapp and to the said Edwin Clapp certain lands as specified in said cross-bill, and that one Lewis Clapp conveyed to said Edwin certain other lands, all as stated in said cross-bill, and that he believes that said deeds were made and recorded at the dates specified in said cross-bill

And as to the statements in said cross-bill that the said Jason and the said Edwin took the title to said lands in trust, as in said cross-bill stated, to secure certain advances of money made by them to this respondent, and that afterwards, said monies having been by him repaid, the said Jason and the said Edwin did, at the request of this respondent, each execute a deed whereby, by the two deeds so by them executed, one by each, they conveyed said lands to one Ruggles Woodbridge Clapp, this respondent admits all said statements to be true.

And this respondent, further answering, admits that the said Ruggles W. Clapp at no time had any beneficial interest in said lands or in any part thereof, but that he took the title to said lands, as before stated, as a naked trustee for this respondent.

908 And as to the statements in said cross-bill in reference to an alleged loan of money by the said Ebenezer to this re-

spondent in July, A. D. 1856, and as to all the statements connected therewith, this respondent, answering, says that he denies that said statements as made in said bill are true, and in reference to the same he says that the only reason why the title to said lands in said cross-bill named was ever vested in the said Jason Clapp and Edwin Clapp was that they had loaned to this respondent a certain sum of money to be used by him in payment for part of said lands, and that in the year A. D. 1855 respondent had a settlement with them at that time, at which settlement they claimed that he owed them on account of said advance the sum of six hundred and fifty dollars, which sum this respondent then paid to them, and thereupon, at the request of this respondent, they, the said Edwin and Jason, executed and delivered deeds conveying the legal title of all said lands to one Ruggles W. Clapp, as stated by said Edwin in his said cross-bill herein.

And respondent saith that immediately after the said Ruggles had received the said deeds he, the said Ruggles, executed to one E. W. McLean a mortgage conveying all said premises, which said mortgage was made for the purpose of securing to the said McLean the payment of the sum of seven thousand dollars, the said
909 debt being made by the purchase from said McLean of a stock of goods to that amount, which said goods so purchased were, when purchased, the property of and bought for this respondent, though the purchase thereof was made in the name of the said Ruggles; that as said goods were sold the avails thereof were forwarded to the said Ruggles for the purpose of making payment of the said mortgage debt.

And respondent avers that all the matters as hereinabove stated were, at the time of the happening thereof, well known to the said Edwin Clapp.

And respondent further avers after money enough had been realized from said goods and had been received by the said Ruggles with which to discharge said mortgage debt this respondent demanded of the said Ruggles that he should pay the said mortgage debt and should procure a release of the said mortgage and should then convey the said property to this respondent, and thereupon the said Ruggles stated to this respondent that the deeds so as aforesaid made to him by the said Edwin and Jason had not, as to their execution, been properly acknowledged, and that he, the said Ruggles, had returned the said deeds to the said Edwin and Jason, and said to this respondent that they, the said Edwin and Jason, then held the same.

And respondent avers that the said mortgage debt to the
910 said McLean has been fully paid and the notes given therefor surrendered; and respondent avers that it was not until at least six months after the making of said statement by said Ruggles to this respondent that this respondent received from his father the sum of twenty-six hundred dollars referred to in said cross-bill; and this respondent denies that there was either then or at any other time any deposit made of said deeds as a security for said "*for said*" loan, or that it was ever proposed that they or either of them should

be held as a security therefor, nor did the said respondent's father, the said Ebenezer, ever demand, suggest, or require that said deeds or either of them should be so held.

And respondent denies that the said Edwin or the said Jason ever did hold said deeds as a security for said loan, and he denies that said deeds or either of them were ever placed in the hands of the said Edwin at or after the time of the making of said loan.

And respondent avers that his father never called upon him for a repayment of said money nor of any part thereof, nor, as respondent verily believes, did his father ever intend to demand payment of the same; and respondent saith that more than ten years after the making of said loan, to wit, in November, A. D. 1866, this respondent, in company with his father, visited the said Jason Clapp and Edwin Clapp at Pittsfield, Massachusetts, and that this
911 respondent then and there told his father in their presence that he wished to repay said money; that the conversation that then took place between them all was in substance as follows: Edwin replied to respondent that respondent's father did not need the money and would not take it from respondent; that respondent's father, the said Ebenezer, then had a large amount of funds in their possession at interest, and that he did not even use the interest of his money, and it was then suggested in the presence of all that it would be well that the said Ebenezer should make and execute a will, which he, the said Ebenezer, then said he would do, and shortly thereafter the said Ebenezer went to Amherst, Massachusetts, where his counsel, the Hon. Mr. Dickenson, then a Senator in Congress from said State of Massachusetts, drew a will for the said Ebenezer, which will the said Ebenezer then and there executed, and in and by which he bequeathed to this respondent the said indebtedness as his share in the said Ebenezer's estate.

And this respondent avers that he has no reason to believe and does not believe that any other will has since been executed by the said Ebenezer, but he saith that the said Ebenezer is well advanced in years, and since the time of the making of said will has been greatly incapacitated for the management of any of his busi-
912 ness affairs and, as affiant is informed and believes, does not attempt any personal management thereof, by reason whereof and of other matters hereinbefore and hereinafter stated this respondent believes and avers that the said Edwin in his defense in this case and in prosecuting his cross-bill herein, all of which he professes to have done for the benefit of the said Ebenezer, is in fact acting without his knowledge or consent.

And as to the statements in said cross-bill in reference to certain statements alleged therein to have been made by the said Ruggles to the said Edwin at the time when the said Ruggles returned to the said Edwin the said deeds, this respondent saith that he is not informed and therefore denies the same, but he saith that at the time of said return the said deeds showed by the endorsement thereon that they had each been filed for record in the recorder's office of said county of Lee, and also showed by said endorsement that one

of them had in fact been recorded in said office, all of which the said Edwin could well have seen by looking at said deeds.

And as to the statements in said cross-bill that the said Edwin did not, until about the 10th day of December, A. D. 1860, have any knowledge that the said deeds or either of them had been recorded, this respondent denies the same.

913 And as to the statements in said cross-bill that from time to time down to a recent period this respondent acknowledged his indebtedness to his father and acknowledged that the said Edwin held the legal title to all said lands in trust to secure payment of said indebtedness, this respondent, answering, saith that he has never made any other acknowledgments as to the fact of such indebtedness than of the character hereinabove set forth; that he has acknowledged the fact of having received said money from his father, but has always believed that since the time of said interview at Pittsfield his father considered said indebtedness practically cancelled, but this respondent denies that he has ever acknowledged that *that* the said Edwin and the said Jason or either of them ever held the legal title to said lands in trust to secure the payment of said indebtedness.

And as to the statements in the said cross-bill in reference to the alleged appointment by the said Edwin of one Cephas Clapp as his, the said Edwin's, agent for the management and general supervision of said lands, this respondent denies all the same, and denies that *that* the said Cephas ever exercised any management over said premises save as the agent of this respondent; that in the year A. D. 1861 this respondent enlisted in the 7th Regiment of the Illinois Cavalry, and when about leaving for the war this respondent employed the said Cephas to look after his personal property

914 and also the said lands, and the said Cephas has from that time up to the first of September, A. D. 1867, transacted some business, more or less, every year for this respondent, but he has never paid any taxes on said land save at the order and with the money of this respondent and while acting under the pay of this respondent, and this respondent never knew until the filing of said cross-bill that the said Cephas claimed to be acting for any person but this respondent.

And as to the statements in said cross-bill that on or about the first day of April, A. D. 1864, the said Edwin sent the said deeds to the said Cephas, who was then a resident of said Lee county, Illinois, and as to the statement that they were so sent in order that the said Cephas, as stated in said cross-bill, might be the better able to protect the said Edwin's interest, this respondent, answering, saith that until the 24th day of January, A. D. 1868, he had no knowledge or information that the said deeds were in the possession of the — Cephas, and that he learned said fact at that time, as hereinafter stated, but he denies that the said deeds were so sent for the purpose stated in said cross-bill, and he saith that he acquired a knowledge of the fact in manner following: Some time in the summer of 1867 the said Cephas Clapp told this respondent that he, respondent, had better get a deed from Ruggles of all said lands, as he, the said

Cephas, then stated and as respondent then well knew the
915 legal title to said lands was then vested in the said Ruggles,
and that there was danger that the said lands would be attached to pay the debts of the said Ruggles.

And respondent saith that at that time the said Ruggles was engaged in business which kept him living some time in the city of Washington and at other times in New York city and at others in the State of Massachusetts, and that for some time respondent was unable to find just where the said Ruggles was; that in the month of January, A. D. 1868, respondent went to the city of Washington, and, not finding the said Ruggles there, respondent went to the city of New York, where he found the said Ruggles on the 10th day of January, A. D. 1868, and on said day a deed from the said Ruggles and wife conveying to this respondent all the said lands was duly prepared and entirely filled out, giving the names of all the parties to said conveyance and stating in full therein the consideration and the description of the premises precisely as all of the same now appear in said deed, and which said deed was, as to its execution by the said Ruggles, acknowledged by him, the said Ruggles, before a notary public, in the city of New York, on Saturday, the 11th day of January, A. D. 1868; and the wife of said Ruggles being then at Chesterfield, in the State of Massachusetts, this respondent and the
said Ruggles went where she was, and she acknowledged the
916 execution of said deed eleven days thereafter.

And at the time that she executed said deed she and her husband, the said Ruggles, executed and delivered to this respondent a certain other deed, purporting to convey a certain eighty-acre tract of land, other and different land from any involved in this suit, in which said other deed certain blanks were left unfilled and which said other deed respondent supposes is the one about which the said Edwin had received some information which may have led him to believe as stated by him is his cross-bill.

And respondent says he, respondent, on the 24th day of January, A. D. 1868, went to Pittsfield, Massachusetts, and saw said Edwin and said Jasen and told them that he had got the deed from Ruggles for the premises in controversy, and that he wanted the said two deeds which had been made by them to the said Ruggles, as hereinbefore stated, and thereupon the said Edwin told this respondent that said deeds were in Illinois, in the possession of said Cephas, and that respondent could get them from the said Cephas by calling on him for them; that shortly thereafter respondent returned to his home, in said Lee county, and took to the recorder's office in said county for record the said deed so made to him by the said Ruggles, and respondent then found that one Ebenezer Lee Clapp has just commenced a suit in the circuit court of said county in which he
had attached said lands as the property of the said Ruggles
917 W. Clapp; that within a day or two thereafter respondent
called upon the said Cephas Clapp to obtain the said two deeds, and the said Cephas Clapp then and there delivered the said deeds to respondent, and this *this* respondent received them, and he and the said Cephas rode uptown together in said Cephas' sleigh;

that respondent then went to Dixon, the county-seat of Lee county, to consult with his attorney in reference to the said attachment suit, and at said interview exhibited said deeds to his said attorney, and it then appeared that the said two deeds had been mutilated.

And respondent further saith that it is not true that the said Cephas ever demanded from this respondent a return of the said deeds, but, on the contrary, respondent saith that on the day next after the one on which the said Cephas gave him the said deeds this respondent had an interview with the said Cephas, and the said Cephas said nothing whatever about any return of said deeds, nor has he ever claimed from this respondent any return of the said deeds.

And as to the statements made in said cross-bill as to an alleged borrowing by this respondent from the said Edwin of the sum of one hundred and thirty-nine dollars, and of the alleged verbal agreement that the said Edwin should retain said deeds as a security for the repayment of said loan also, this respondent says that
918 it is true that he did borrow said sum of money, but he denies that there was any understanding or agreement or even any proposition that any security should be asked or taken therefor except the note of this respondent; that when this respondent was in Pittsfield, in January, A. D. 1868, he told said Edwin Clapp he was ready to pay said note, and requested him to bring it to the hotel where respondent was stopping, and he soon after returned to the hotel without the note, saying he had forgotten it; that he would go back to his office and get it. This respondent did not see him afterwards.

And as to the statements in said cross-bill that there is a balance of one hundred dollars due to the said Edwin on account of taxes and repairs this respondent says that he denies all the same, and saith that the said Edwin never paid or caused to be paid any taxes whatever on said land and never expended or caused to be expended any money for repairs on the same.

And as to the statements in said cross-bill in reference to the execution by said Ruggles of a deed to this respondent on the 10th day of January, A. D. 1868, and as to all matters stated in said cross-bill in connection therewith, this respondent saith, as he has already stated, that the said Ruggles did on or about said day execute a deed to this respondent of all the aforesaid lands, but he denies that said deed contained no description of any lands or the name
919 of any grantee, and saith that when said deed was executed — did contain a description of all the said lands and did contain the name of this respondent and is in all respects the same now that it was at the time it was signed.

And respondent admits that the said deed was filed for record in said recorder's office on January 30th, A. D. 1868, and was duly recorded as in said cross-bill stated.

And as to all the statements in said cross-bill as to the manner in which this respondent obtained possession of the said Cephas of the two deeds and all the statements in connection therewith this respondent denies each and every of the same, and saith that he has

already fully stated herein all the facts connected with the delivery to him of the said deeds by the said Cephas.

And as to all the statements in said cross-bill to the effect that on the 1st day of March, A. D. 1869, this respondent executed to one Lot Chadwick a pretended conveyance of all said lands for a pretended consideration this respondent saith that he denies all the same, but admits that on said day he did execute and deliver to said Chadwick a good and sufficient conveyance of all said lands, and that said conveyance was made for the consideration of ten thousand dollars, therein named, and that the whole of said consideration has been paid by the said Chadwick to this respondent.

920 And that the sum of about eight thousand two hundred dollars was paid at the time of the making of said deed, and the further sum of seven hundred and sixty dollars and eighty cents was paid by the said Chadwick, at the request of this respondent, at or soon after the time of the making of said deed, the said sum being paid in discharge of the judgment obtained by the said Ebenezer Lee Clapp in the suit commenced by him as aforesaid by attachment against the said lands on the property of the said Ruggles; and the further sum of three hundred and sixty-nine dollars and forty cents was, at and about the same time, paid by the said Chadwick, at the request of this respondent, to free said lands from the lien of two certain judgments obtained against this respondent, and the balance of the said consideration money was shortly thereafter paid in full by the said Chadwick; and respondent believes it to be true that the said deed has been recorded in said recorder's office, as in said cross-bill stated, but he denies that since the execution of said conveyance he has in any way assumed to act as the owner of said premises.

And respondent, further answering, saith that he has been informed and believes it to be true that the said Chadwick has filed his bill in chancery in this court, as stated in the said cross-bill.

And, further answering, he denies that the said Chadwick accepted said conveyance for the purpose of enabling this respondent

921 to defraud the said Ebenezer and the said Edwin or either of them.

And, further answering, respondent says that the said deed from the said Edwin to the said Ruggles had been filed for record in said recorder's office, and a certificate to that effect was endorsed thereon in said recorder's office before the said deed was returned by the said Ruggles to the said Cephas.

And, further answering, this respondent says that he has resided on said land continuously from before the time that the said Edwin received the legal title thereto and down to and until the time when this respondent sold the same to said Chadwick, being for the period of more than sixteen years, during all which time he had the sole management and control thereof, and that since the date of the said sale to said Chadwick, who is the father-in-law of this respondent and is now well advanced in years, this respondent and his wife have, by the consent of the said Chadwick, continued to occupy a dwell-

ing-house on said land, and this respondent has, under the direction of said Chadwick, transacted some portion of the business between said Chadwick and some of the tenants of the said Chadwick who have been occupying the said lands, but that this respondent has in no other way exercised any authority or control over said premises,
or over any of the said tenants, and he denies that he has or
922 has had at any time since the said sale any legal or equitable interest in the said lands or in any part thereof.

And, further answering, he denies that the said Edwin Clapp has or is entitled to have any lien whatever upon said premises.

And, further answering, this respondent says that on the trial of the said suit so as aforesaid instituted by the said Ebenezer Lee Clapp against the said Ruggles, and which was commenced by attaching the said lands as the property of the said Ruggles, the said Cephas Clapp appeared as a witness on behalf of the said plaintiff in said suit, and shortly after the judgment was obtained therein it was assigned to the said Cephas, who caused an execution to be issued thereon, to be levied upon said lands, and the same were about to be sold as the property of the said Ruggles at the time when this respondent sold the same to the said Chadwick, all of which the said Edwin well knew at the time, and as long before that as August the 28, A. D. 1868, the said Edwin wrote a letter to this respondent and therein advised him, respondent, to pay said Ebenezer Lee Clapp's demand, but said nothing whatever about him, the said Edwin, having any claim or interest in said property, either on his own account or as trustee of the said Ebenezer.

And respondent further saith that at the time he made the said sale to said Chadwick he had not only had the sole and ex-
923 clusive possession of said land for a long space of time, but had been in possession for more than a year of the said two deeds so delivered to him by the said Cephas, during all which time neither the said Edwin nor the said Cephas claimed, so far as this respondent knows, any right or interest in said premises, and during which time the solicitor of the said Edwin had caused said lands to be levied on as the property of this respondent; all of which matters were well known by the said Chadwick at the time he made said purchase.

And as to the statements in said cross-bill to the effect that certain payments —, to wit, the sum of thirty dollars on October 30th, A. D. 1863, and twenty dollars on October 30th, 1864, this respondent hath no knowledge as to the same; and if any such credits have been endorsed upon any evidence of indebtedness given by this respondent by the said Ebenezer Clapp, it has been done without the knowledge or direction of this respondent.

Without this, that any other matter or thing in the said cross-bill stated or charged and not herein and hereby well and sufficiently confessed and avoided, traversed or denied, is true to the best of the knowledge, information, or belief of this respondent.

And this respondent, having fully answered, prays to be hence

dismissed with his reasonable costs by him in this behalf
924 most wrongfully sustained.

HENRY CLAPP.

WILLIAM E. IVES,
Solicitor for Respondent.

Endorsed: Filed March 6th, A. D. 1871. J. N. Hyde, clerk.

925 STATE OF ILLINOIS, } ss:
Lee County, }

In the Circuit Court of Lee County, of the March Term, A. D. 1871.
In Chancery.

The replication of Edwin Clapp, complainant, to the answer of Lot Chadwick to the cross-bill filed herein.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto saith that he does and will aver, maintain, and prove his said cross-bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable
926 court shall direct, and humbly prays as in and by his said cross-bill he has already prayed.

B. H. TRUSDELL,
Sol. for said Edwin Clapp.

Endorsed, to wit: Filed this 10th day of April, A. D. 1871. J. N. Hyde, clerk.

927 STATE OF ILLINOIS, } ss:
Lee County, }

In the Circuit Court of Lee County, of the March Term, A. D. 1871.
In Chancery.

The replication of Edwin Clapp, complainant, to the answer of Henry Clapp to cross-bill.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto saith that he does and will aver, maintain, and prove his said cross-bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that

the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as the honorable
928 court shall direct, and humbly prays as in and by his said cross-bill he has already prayed.

B. H. TRUSDELL,
Sol. for Edwin Clapp.

Endorsed, to wit: Filed this 10th day of April, A. D. 1871. J. N. Hyde, clerk.

929 *Answer of Ebenezer Clapp to Cross-Bill.*

STATE OF ILLINOIS, } ss:
Lee County, }

In the Circuit Court, to the February Term, A. D. 1872.

LOT CHADWICK
vs.
EDWIN CLAPP *et al.* } Original Bill.

EDWIN CLAPP
vs.
LOT CHADWICK *et al.* } Cross-Bill.

And now comes the said defendant, Ebenezer Clapp, and for answer to the cross-bill filed herein by the said Edwin Clapp says that all the averments of said cross-bill of which he has any personal knowledge are true, and that he believes all the averments thereof are true; and further saith not.

A. K. TRUSDELL, *Solicitor.*

Endorsed, to wit: Filed January 24th, A. D. 1872. J. N. Hyde, clerk.

930 *Decree.*

STATE OF ILLINOIS, } ss:
Lee County, }

In the Circuit Court, of the February Term, A. D. 1879.

LOT CHADWICK
vs.
EDWIN CLAPP and MARY M. CLAPP. } Original Bill.

EDWIN CLAPP
vs.
HENRY CLAPP and LOT CHADWICK. } Cross-Bill.

This cause having been brought on for a hearing by stipulation

of the parties in vacation on the twenty-sixth day of August, A. D. 1878, on the original bill herein and the answer of Edwin Clapp thereto and the replication of the complainant in the original bill to said answer and the default of the defendant Mary M. Clapp, and also the cross-bill of Edwin Clapp and the several respective answers of Lot Chadwick and Henry Clapp to said cross-bill and the replications of the complainant in said cross-bill to said respective answers, and the proofs taken in said cause, and *and* oral testimony and evidence taken and heard before the court on said hearing, and the court having heard the same and the arguments
931 of counsel for the respective parties thereon, and the court having duly considered the same until now, on this fourteenth day of February, A. D. 1879, and being now sufficiently advised in the premises, the court doth find that the equities herein are with the complainant in the original bill, and finds that on the fourteenth day of October, A. D. 1853, one John F. Clapp was seized in fee of the following-described real estate, situate in said *said* county of Lee, to wit: The east half of the southwest quarter of section number twenty-eight (28) and the east half of the northwest quarter of section number thirty-three (33), all in township number twenty-one (21) north, of range number eleven (11) east, of the fourth principal meridian; that said John F. Clapp did on said day sign, seal, execute, and deliver to one Jason Clapp and one Edwin Clapp a warranty deed, in and by which he conveyed to them his title to said lands, which deed was, on the twenty-ninth day of October, A. D. 1853, filed for record in the recorder's office of said Lee county and duly recorded therein.

That on the twenty-ninth day of October, A. D. 1853, one Lewis Clapp was owner in fee of the following-described real estate, also situate in said Lee county, to wit: The northeast quarter of section number thirty-three (33), in township number (*21*) twenty-one (21) north, of range number eleven (11) east, of the fourth principal
932 meridian; that said Lewis Clapp did, on the day last aforesaid, sign, seal, execute, and deliver a warranty deed, in and by which he conveyed his said title in and to the lands last above described to the said defendant, Edwin Clapp; that said last-mentioned deed was on the same day of its said execution filed for record in said recorder's office and duly recorded therein; that afterwards, on the twenty-eighth day of November, A. D. 1855, the said Jason Clapp, together with Cecelia E. Clapp, his wife, made, executed, acknowledged, and delivered to one Ruggles W. Clapp a warranty deed, in and by which they conveyed to the said Ruggles W. Clapp all their title in and to the undivided one-half of the said east half of the northwest quarter of section number thirty-three and the undivided one-half of the said southwest quarter of section number twenty-eight (28), all in township number twenty-one (21) north, of range number eleven (11) east, of the fourth principal meridian, and that said last-mentioned deed was filed for record in the recorder's office of said Lee county on the fifth day of December, A. D. 1855, and was duly recorded therein.

That on the said twenty-eighth day of November, A. D. 1855, the

said defendants, Edwin Clapp and Mary M. Clapp, his wife, made, executed, acknowledged, and delivered to the said Ruggles W. Clapp a warranty deed, in and by which they conveyed to the said
933 Ruggles W. Clapp all their title in and to the undivided one-half of the said east half of the northwest quarter of section number thirty-three (33) and of the said east half of the southwest quarter of section number twenty-eight (28), and also all of the northeast quarter of said section number thirty-three (33); that on the fifth day of December, A. D. 1855, the last-mentioned deed was filed for record in the recorder's office of said Lee county, but was never in fact spread at large upon the records of said office, and that before the same had been spread upon the records of said recorder's office said deed was by some person unknown abstracted or taken away from said recorder's office and was afterwards by some person unknown mutilated and defaced by drawing ink lines across and over the signatures of the said defendants, Edwin Clapp and Mary M. Clapp, thereto, and also by the writing after each of their said signatures the words "no go."

And the court further finds that on the tenth day of January, A. D. 1868, the said Ruggles W. Clapp, grantee in the two deeds last hereinabove named, together with Emily B. Clapp, his wife, signed, sealed, executed and delivered to one Henry Clapp (defendant in the cross-bill herein) a deed, in and by which they conveyed to the said Henry Clapp all their right, title, and interest in and to all the lands hereinbefore described; that said deed was duly acknowledged and was filed for record in the recorder's office of said Lee
934 county on the thirtieth day of January, A. D. 1868, and duly recorded therein.

And the court doth further find that on the first day of March, A. D. 1869, the said Henry Clapp, together with Sarah A. Clapp, signed, sealed, and delivered a certain deed of conveyance, in and by which they conveyed to Lot Chadwick, the complainant in the original bill herein, all of the said parcels of land heretofore described; that said last-named deed was duly acknowledged by the said grantors therein, and on the thirtieth day of March, A. D. 1869, the same was filed for record in the recorder's office of said Lee county and duly recorded therein; that the consideration paid by the said Chadwick to the said Henry Clapp for the said lands so conveyed by the said last-mentioned deed was the sum of ten thousand dollars; that said purchase of said lands by said Chadwick was made in good faith for an adequate and valuable consideration, and that at the time of said purchase and conveyance thereof to him as aforesaid the said Lot Chadwick had no knowledge or notice of any equitable mortgage thereof in favor of said Edwin Clapp or Jason Clapp or Ebenezer Clapp or any or either of them, and he had not at that time any knowledge or notice, express or implied, that said deeds so made by said Jason Clapp and wife and Edwin Clapp and wife to Ruggles W. Clapp or either of said deeds had been deposited with the said Edwin Clapp as security for an indebtedness
935 owing from said Henry Clapp to his father, Ebenezer Clapp, or as security for an indebtedness owing from said Henry

Clapp to said Edwin Clapp, or that said deeds had ever been deposited with said Edwin Clapp for any purpose whatever.

And that when he so purchased and paid for said lands the said complainant, Lot Chadwick, had no knowledge or notice, express or implied, of the claim of the said Edwin Clapp to an equitable lien upon the said lands, as set forth in the cross-bill of said Edwin herein; and the court doth further find that the said Lot Chadwick, complainant in the original bill, is a *bona fide* purchaser of said lands for an adequate and valuable consideration, and is entitled to hold the said lands freed and discharged from any lien, equitable mortgage, or claim thereon in favor of the said Edwin Clapp arising out of any of the matters set up in the cross-bill of said Edwin Clapp, and that the equities herein are with Lot Chadwick, complainant in the original bill and defendant in the cross-bill; and it is therefore ordered, adjudged, and decreed by the court that the title which the said Edwin Clapp had and held in and to the said undivided one-half of the east half of the southwest quarter of section number twenty-eight (28), and the undivided one-half of the east half of the northwest quarter of section number thirty-three (33), and all of the northeast quarter of section number thirty-three (33), all
in township number twenty-one (21) north, of range number
936 eleven (11) east, of the fourth principal meridian, situated in said county of Lee and State of Illinois, passed to Ruggles W. Clapp and was vested in him on the twenty-eight day of November, A. D. 1855, by the said deed thereof on that day made, executed, acknowledged, and delivered by the said Edwin Clapp and Mary M. Clapp, his wife, to the said Ruggles W. Clapp, and that said title in and to said lands passed to Henry Clapp and was vested in him on the tenth day of January, A. D. 1868, by the said deed thereof on that day made, executed, and delivered by the said Ruggles W. Clapp and Emily B. Clapp, his wife, to the said Henry Clapp, and that the said title in and to said lands passed to the complainant, Lot Chadwick, and was vested in him on the first day of March, A. D. 1869, by the said deed thereof on that day made, executed, and delivered by the said Henry Clapp and Sarah A. Clapp, his wife, to the said Lot Chadwick.

And it is further ordered, adjudged, and decreed by the court that the said Edwin Clapp and Mary M. Clapp, within ninety (90) days from the filing of this decree, make, execute, acknowledge, and deliver unto the said Lot Chadwick, complainant in the original bill, a deed of conveyance of the said premises described in said deed of Edwin Clapp and Mary M. Clapp to Ruggles W. Clapp, bearing date the twenty-eighth day of November, A. D. 1855, to wit, the undi-
vided one-half of the east half of the southwest quarter of
937 section number twenty-eight (28), and the undivided one-half of the east half of the northwest quarter of section number thirty-three (33), and all of the northeast quarter of said section number thirty-three (33), all in township number twenty-one (21) north, of range number eleven (11) east, of the fourth principal meridian, situated in the county of Lee and State of Illinois, sufficient to convey unto said Lot Chadwick, his heirs and assigns, all the

right, title, interest, and claim which said Edwin Clapp and Mary M. Clapp had in and to said premises on the twenty-eighth day of November, A. D. 1855; and in case the said Edwin Clapp and Mary M. Clapp fail, neglect, or refuse to make such conveyance within the said time named herein, that then the master in chancery of this court is hereby appointed and authorized to make, execute, and deliver such conveyance for and in the name of said Edwin Clapp and Mary M. Clapp.

And it is further ordered, adjudged, and decreed that the defendants in the original bill pay the costs of said proceedings, to be taxed by the clerk of this court, and that execution issue therefor.

And it is further ordered, adjudged, and decreed that the cross-bill of the said Edwin Clapp be, and the same is hereby, dismissed at the costs of the complainant therein, to be taxed by the clerk.

The stipulation of the parties under which this cause was heard having provided the decree herein when rendered should be
938 entered as of the May term, A. D. 1878, it is therefore further ordered, adjudged, and decreed that this decree be entered as of twenty-ninth day of May, A. D. 1878, being of the May term, A. D. 1878, of this court.

The defendants in the original bill and the complainant in the cross-bill herein except to the foregoing decree and pray an appeal, which is allowed upon the party perfecting such an appeal entering into bond in the penal sum of five hundred dollars, conditioned according to law, with security to be approved by the clerk of this court. The time for filing such bond is hereby extended until the twenty-sixth day of May, A. D. 1879, and the respective parties hereto are hereby granted until said last-named day to prepare and file herein a certificate of the evidence in the case.

WILLIAM BROWN, *Judge.*

(Endorsed:) Filed February 14, 1879. R. Warriner, clerk.

939 STATE OF ILLINOIS, } *ss:*
County of Lee, }

I, Ira W. Lewis, clerk of the circuit court in and for said county of Lee, in the State aforesaid, do hereby certify that the foregoing are true and correct copies respectively of the original bill, answer of Edwin Clapp thereto, replication of Lot Chadwick to said answer, cross-bill of Edwin Clapp, answer of Lot Chadwick thereto, answer of Henry Clapp to said cross-bill, replication to answer of Lot Chadwick to said cross-bill, replication to answer of Henry Clapp to said cross-bill, answer of Ebenezer Clapp to cross-bill, and the decree of court in a certain cause lately pending in said Lee county circuit court, on the chancery side thereof, wherein said Lot Chadwick was complainant and Edwin Clapp and Mary M. Clapp were defendants in the original bill and Edwin Clapp was complainant and Lot Chadwick, Henry Clapp, and Ebenezer Clapp were defendants in the cross-bill therein, as the same appears to me from the files in said cause now in my office remaining.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Dixon, in said county, this twelfth day of September, A. D. 1885.

IRA W. LEWIS, *Clerk.*

940 STATE OF ILLINOIS, } ss:
County of Lee, }

I, Ira W. Lewis, clerk of the circuit court in and for said county of Lee, in the State aforesaid, do hereby certify that the final decree mentioned in the foregoing certificate has never been appealed from, annulled, reversed, or set aside, and that the same is now in full force and effect.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Dixon, in said county, this twelfth day of September, A. D. 1885.

IRA W. LEWIS, *Clerk.*

941 *James S. Briggs.*

Where do you live?

Amboy.

How long have you lived here?

30 years.

What's your business?

Merchant; mercantile business.

How long have you been engaged in that business?

30 years in this place.

Where did you first begin business in Amboy?

I think in the place occupied by Woods and Wonderly at present—that is, on the lot occupied by them.

That's on the north side of Main street?

Yes, sir.

Did you ever have a store on the south side of Main street?

Yes, sir.

When did you first enter that store?

I think in the winter of '56—that is, in the fall and winter of '56 and beginning of '57.

How near was that store to lot 5, block 11, Main St.?

Within about probably 36 feet of the alley on the west side of lot 5, block 11, if I understand is next the alley on the east side.

Have you ever bought or sold any real property in Amboy?

942 Yes, sir.

To what extent?

Have bought my house, lots, and store.

When did you buy them?

Somewhere along about 1860.

Have you bought or sold any other real property that you now remember?

Well, that was the extent—my house and lots.

Have you been acquainted with the value of real property in Amboy from the time you come here to the present time?

I think I have been acquainted with what I thought to be th value.

Have you known of the purchase and sales of property in Amboy during this time?

Yes, sir; there's been a good many sales perfected—a good deal of buying and selling.

State how the value of real property in Amboy from 1854 to 1858 compared with the value of same property now in the same part of city.

At what time?

Well, any time since, aside from the value of the buildings.

Well, from '54 to '58 and '60 the value of property was somewhat exciting; considered good; was held at pretty high figures.

State whether or not Amboy had at that time what we would state a boom.

Yes; there was rather a boom.

What was the cause of that interest in the town?

Well, the location of the shops and the railroad and other things.

State whether or not the I. C. R. R. was here then.

943 The I. C. R. R. was built through here in 1854, and the shops were located here in that time; the round-house and shops were here in 1855. That's my first appearance here, Dec., 1855.

State whether or not during that period—during 1854 to 1860—Amboy expected to obtain the county-seat of Lee county.

Yes, sir; that's what we wanted; but we finally abandoned the idea.

State whether or not Amboy is located near the centre of Lee county.

Well, within a mile or a mile and a half of it.

State whether or not it's owing to that Amboy never obtained the county-seat and finally gave up that anticipation.

Well, I don't know; we finally abandoned the idea in general,

State whether or not you are acquainted with the middle 18 ft. of lot 5, block 11, formally known as the Market lot, in the spring of 1858.

(Council for complainant- objects to any further testimony as to the value of the property referred to in this question, as *any* time defendants have gone into that question-in-chief, and further testimony not being proper rebut-al, the value in 1858 not having been sent complainants.)

Now, as I understand it, you asked me if I am acquainted with 18 ft. that is located east of the Weddell lot—in 18 ft. of the corner—about the value of the property. Well, I have my general idea of the value of the property.

What was the value of this Market lot described in Feb., 1858?

944 The lot and building?

The lot and building; yes.

Well, I should think probably in the neighborhood of $100 a foot—$1,800.

What was the value of the lot without the building at that time, in your judgment?

Well, I should think it might have been worth 4 or $500. I was trying to buy some about 1860, or about that time, on the west side, controlled by Mollie, and I was trying to buy east of them—joining them. I offered him $100 a foot for the vacant ground, 5 foot running back, of course, that was on the other side of the alley joining him.

That was within 35 feet of the alley?

That would be about 33 to 35 feet from it. The lots were broken lots and generally make a store and part of a store.

Cross-examination:

What was the condition of that building in 1858? I mean the building on the Market lot.

A. Well, I should think in fair condition, according to my memory.

Q. Do you now distinctly remember the size, condition, and manner in which the building was constructed?

A. Nothing more than the ordinary way about that time; just a wooden building, to the best of my recollection.

Q. Do you know enough about that building to say what it cost?

A. I don't think I do; no, sir.

Q. Do you know whether there was a cellar under it or not, to your recollection?

945 A. I think there was.

Q. Do you know whether it was the full size of the lot or not?

A. No, sir; I don't know that.

Q. Do you know, of your own knowledge, how long the building had been constructed in 1858?

A. My impression is a few years.

Q. Were you ever upstairs in it?

A. I couldn't say now, for the reason there had been a furniture store upstairs. Perhaps the furniture store was not in that building, and I couldn't tell now whether I was in it or not.

Q. You didn't see the building when it was in process of erection?

A. I should think, as it occurs to me now, that the building was there when I came here, in 1855, but I couldn't say distinctly whether it was built after or before I come; but I think before.

Q. Do you remember distinctly whether it was more than one story high?

A. I think there was an upper part to the building, according to my recollection.

Q. When did the value of property in Amboy commence to decline?

A. Well, since our bonded debt, principally, and since we abandoned the idea of getting the county-seat.

Q. Did it begin to decline as early as 1860?

A. I think not. Property was high, I think, in 1860; business lots all through.

Q. State what property in Amboy was sold in 1854 to 1858 on the south side of Main St. in addition with that you have already mentioned.

A. In '54 to '58, not later than '58—I couldn't state dis-
946 tinctly about the change, but there was lots of changes made on both sides.

Q. I wanted to know if you can tell what lots in Amboy, in addition to those you have already mentioned, located on the south side of Main street, was sold in 1854 to 1858?

A. I couldn't say distinctly about the time of the lots changing.

Q. Can you say now that a single lot on the south side was sold during those years except the ones that you were or became interested in?

A. I couldn't say in relation to the time, because so many years have elapsed.

Q. Then you have no means of telling what the market value by actual sale was of such lots during those years?

A. I couldn't now define distinctly from 1854 to '58. I couldn't say whether the lots were sold in that time; they may have been sold several years after.

Q. Do you remember of the sale of a portion of a lot in that same block occupied by a Mr. Crombie?

A. No, sir; not distinctly.

Q. You spoke of wanting to purchase 5 feet east of your lot; how much did the party own in addition to the 5 feet?

A. I should think about 35 or 36 feet—30 anyways, and perhaps 33 upwards to 36 ft.—including this 5 feet.

Q. What objections did he have to selling you the 5 ft.? Wasn't it that it would narrow his lot?

A. He made no objection, only that he refused the offer.

Q. For what purpose did you desire to buy the 5 ft.?

947 A. For building purposes.

Q. You bought on the south side because property was cheaper than on the north side, didn't you?

A. No, sir; on account of the location.

Q. Wasn't the north side at that time more desirable for business purposes?

A. I didn't consider it so.

Q. How soon did the north side become more desirable for business purposes?

A. Business was done on both sides, but more particularly on the avenue; it was centered on the corners and the avenue.

Q. Well, as early as 1856 business began to be better on the north side than on the south side, didn't it?

A. Well, perhaps after the fire business began to centre more on the north side.

Q. What time was the fire?

A. I couldn't really tell just when it was.

Q. What was this building that has been spoken of as located on the Market lot used for from when you first knew it up to 1860?
A. I think by Keefer and Livey as a meat market.
Q. Do you know what rent it brought?
A. I do not.
Q. Do you know what it rented for at any time?
A. I don't think I do.
Q. What was it occupied for after Keefer and Livey vacated it?
A. I don't think I recollect now after that and the fire. I don't call to my memory what.
948 Q. Are you in any way related to Mr. Ives or connected with him in a business way or otherwise?
A. No, sir.
Q. Are you members of the same church or society?
A. No, sir.

Redirect:

Q. I understand you to say there was a 2-story building on this lot?
A. I think there was.
Q. Was it what could be called a 2-story or a story-and-a-half?
A. I think it was a two-story building; upper story may not have been very high.

JAMES S. BRIGGS.

Subscribed and sworn to before me this sixth day of August, A. D. 1886.

JAMES F. SANFORD,
Special Commissioner.

949 *Charles W. Bell.*

Where do you live?
Live in Amboy, Lee Co., Ill.
How long have you lived here?
Since 1852.
What is your business?
Well, its constable business, particularly.
How long have you been constable here?
About 26 years, I believe.
Did you ever hold any other office?
Yes; I did.
What?
Was marshal here several times.
How much of the time have you been marshal?
18 years.
What business, if any, were you engaged in when you first came here?
When I first came here I was teaming.
Have you any trade?
No, sir.

Were you acquainted with the value of property in this town in 1858?

Well, I suppose I was, somewhat.

Were you acquainted with the Market lot, it being a portion of lot 5, block 11, town of Amboy, in 1858?

(Objected to.)

Yes; I think I was.

Where was that situated—on what street?

On Main St., right across the way from here.

Do you know what kind of a building was on it at that time?

950 I think it was a wooden building.

Do you remember when it was built?

I do; yes.

What year was it built in, do you know?

Well, let's see; I think in '54.

Did you have anything to do with the building of it?

Yes, sir.

What?

I built the cellar and foundation and hauled the material for the store, the lumber and stone.

State, if you can, the size of the building.

Well, I couldn't say whether it was 18 or 20 feet in width; I think it was 20. I can't just remember, but think it was 30 feet in length.

The lot was 36 feet deep, was it not?

The lot; I don't remember, but I think it was more than that.

What kind of a building was on the lot—how many stories and what made of?

It was a two-story building, made of lumber, shingled roof, and lathed and plastered.

Did you haul all the material from Mendota?

I think I did, or my teams hauled it all.

State whether or not it had a stone foundation.

It did.

State, if you remember, about the cost of that building when it was completed.

(Objected to.)

Well, I don't know as I could tell what the cost was; if I ever knew I don't now remember exactly.

State the best you recollect.

951 (Objected to.)

As to what the building cost?

Yes.

It seems to me it was 16 or $1,700; the material for building was very high at that time.

What was the value of that lot and the building upon it in the month of February, 1858?

(Objected to as incompetent, and it not appearing that the witness is qualified to testify to its value.)

Well, I should say from 17 to $2,000.

Cross-examined:

You hauled all the lumber for the building from Mendota, I understand you?

Yes, sir.

From what source was the stone procured?

Lee Centre.

How far is that away?

We call it five miles to the Lee Centre stone quarries.

How long was that before the railroad was built through Amboy?

Let's see, the railroad came through that same season.

Who did the carpentering work on this building?

I think it was a man by the name of Stall. There was a number of men working there. I don't remember their names. I believe there was one other I remember; his name was Roberts.

Who employed you to do the hauling?

Ashley.

Is Mr. Ashley living?

952 No, sir; he is not.

How old a man were you at that time?

About 30 years old.

Had you done anything in the line of building yourself?

No, sir.

Do you remember what you were paid for the cellar?

Couldn't remember now.

Did you construct the cellar and foundation?

I think I done the excavating and whole thing, including the wall.

Do you know what was paid for the carpentering work?

I do not.

The building was a light bal-oon frame, was it not?

It was what we call a bal-oon frame; yes.

Wasn't it constructed as lightly as a building of that kind could be constructed?

Well, it was a pretty good building for one of that kind.

Was it more than one or one and one-half story high?

I think it was a two-story building.

Do you feel positive about that?

That — my remembrance about it. The length of the post was 16 or 18 feet. I don't think it was over 16 ft.

Don't you remember now that the lot was only 18 feet wide?

Well, as I said before, I don't know whether it was 18 or

953 20 ft. wide; might not have been more than 18.

Did you buy or sell any property in Amboy in 1854?

Yes; I bought some.

What kind did you buy and where was it located?

I bought a couple of lots on the other side of town, west of the shops.

What buildings were situated on the south side of Main street when the building you spoke of was constructed?

Don't think there was any permanent building at all; there might have been a shanty still there; might have been one about the same time, but that was a lone building.

Did you buy or sell any property here in 1858?

I think not.

Do you know of any property being bought or sold here that year?

I don't know as I could say of any particular property; of course, property was being bought and sold all the while. I don't remember any in particular.

Do you remember of any property being bought or sold within two or three years after that time, 1858?

Well, I presume I do, but what particular property and what particular time I couldn't say; property was selling all the time during those years.

The building you have spoken of was burned down, was it not?

It was.

954 In what year?

I couldn't be positive what year.

State as nearly as you can what year.

I should think it was in '58, but I might be mistaken.

What other property have you ever bought or sold in Amboy other than that you have already mentioned?

I bought the place where I now live, a dwelling place, and the two lots; that's all I bought.

When did you buy the property in which you now live?

In 1860.

Did you sell the other about the same time?

Just shortly before that.

How was property in that year; was it lower or higher than it had been?

As high as it had been, I think; in '60, I mean.

No depression has been up to that time?

No; I think not.

Do you know of any lots on the south side of Main street being bought or sold from 1854 to 1860?

I know there were some bought and sold.

Do you know the prices that were paid in any instance?

Well, I don't know as I could tell.

Was property on the south side of Main street as valuable as it was on the north side?

Yes; I think it was.

What difference, in your opinion, was the value between property situated on the north side and the south side fom 1854 to 1860?

955 Well, I should think the lots on the north side would be worth ⅓ more on the same amount of ground.

The best buildings and the principle business was done on the north side those years, was it not?

Didn't seem to be much difference on the start, but it seemed after to incline more to the north side.

When did it incline to the north side?

Well, after the fire.

About what year was that?

Well, I should think in '58, or perhaps not until '60.

Redirect:

State, if you remember, how many buildings there were on the south side of Main street in 1858 besides the one mentioned.

I couldn't tell you how many; there were some buildings scattered through there, but I don't think I could tell you anything about how many there was.

Was there more in '58 on the north side than there was on the south?

There might have been a little, but I don't think there was much difference.

CHARLES W. BELL.

Subscribed and sworn to before me this sixth day of August, A. D. 1886.

JAMES F. SANFORD,
Special Commissioner.

956 *Warren D. Estey.*

Q. Where do you live?

A. Amboy.

Q. How long have you lived here?

A. I came here in '56, the last of April.

Q. What's your business?

A. Carpenter and joiner.

Q. How long have you been a carpenter & joiner?

A. I worked at it before I left the East.

Q. Have you always worked at that business?

A. Yes, sir.

Q. Were you acquainted with real property in Amboy from 1856 to '65?

A. Well, I was, somewhat.

Q. State whether or not you worked at your trade in Amboy during that period.

A. Yes, sir; I did.

Q. Were you acquainted with property at that time in Amboy known as the Market lot and the building on it?

A. That building was put up when I come here, but I recollect the building described as the building on the Market lot. I think it was 20 feet wide and 30 feet running back, with a small building attached. It was two stories high, the stairs going up to the upper

story from the outside, and I wouldn't be sure whether there were 3 or 4 rooms. I know there was three, and might have been more.

Q. State how it was furnished upstairs and for what purpose.

957 A. There was a back room and front room. I think the whole upstairs was used for a kind of a lumber-room—I should think a store-room.

Q. Were you acquainted with the value of the building in 1858?

(Q. objected to.)

A. Well, I couldn't really state what it was worth then.

(Answer objected to as incompetent and *impressive*.)

Q. What, in your judgment, did the building cost standing on that lot in 1858?

A. Well, I should think it might have cost $1,800 at that time.

Q. And you state, according to your best judgment, the building would cost $1,800 in 1854?

A. Lumber was pretty high at that time.

Q. What, then, was the value of the building and the lot, to your best judgment, in the spring of 1858?

(Ques. objected to, it not appearing that witness is qualified to speak as to the value of the property.)

A. Well, I should say it was worth $1,800 at that time.

Q. What condition was the building in at that time as to repairs?

A. Pretty good, as near as I can remember.

Q. State whether or not it was occupied in both stories.

A. I think it was.

Q. Do you remember as to how that building was occupied during the first years you came here? If so, state what you remember to have been in there until the building burned down.

958 A. Well, before it burned down they had the post office there.

Q. Do you know in what year or years?

A. I think '57 and '58.

Q. Do you remember of any store being there after or before that time?

A. I have been told there was a store.

Q. Do you know what rent was paid for that building or any portion of it?

A. Well, that I couldn't tell.

Q. From the years '56 to '58 state what you were doing here in the way of building and had been.

A. I was busy all the time at that time. I had 3 houses to build in the Kinyon row besides other building.

Q. You were engaged here all the time in your business?

(Ques. objected to as leading.)

A. Yes, sir; I was kept very busy.

Q. What was that building occupied for in 1859?

A. Well, I think the upper part was occupied by a painter, Wm. Skinner.
Q. What was it occupied for below?
A. I don't really remember; but it was occupied in some way.
Q. Well, how was it in 1860? Who occupied it in that time?
A. I think it was a post office kept there.
Q. Well, do you remember distinctly?
A. Well, I couldn't be positive about it.
Q. Do you remember what it was occupied for in 1861?
A. I have forgot, it's so long ago.
Q. Who occupied it in 1858?
959 A. Well, I don't remember so long ago. I can't remember what it was occupied for.

Cross-examination:

Q. Well, then, you can't remember who occupied it in 1856 or '57?
A. Yes; I think a man by the name of Sid. Reeves.
Q. What years?
A. In '57 and '58, I think; in '56, the spring I came here, the post office was there.
Q. Are you positive about that?
A. Yes, sir; it was there 3 years.
Q. Were you ever upstairs in the building?
A. Yes, sir; several times.
Q. What years?
A. Well, while Skinner had a paint shop there. I was up there several times in '58 and '59.
Q. Were you up there before that?
A. Yes, sir; I had been up there before that.
Q. Did you ever look the building over with a view of figuring up its cost?
A. No, sir; never.
Q. Your attention was not called to it, was it?
A. No, sir.
Q. About when was your attention first called to the value of that building?
A. To the value of it? Well, if you would ask me the question I should say the same as I did before.
Q. My question now is it's more than 30 years since you first saw the building. Now, isn't it true that you were first asked how much the building was worth in former days?
960 A. I don't know how much it was.
Q. But my question is whether no one has asked you during all those years what that building was worth.
A. No, sir; not that I remember.
Q. And you wasn't asked, in from 1858 to '60, what it was worth?
A. No, sir.
Q. Do you know what the frame was worth?
A. I know how they put up such buildings then.

Q. But you don't know how this building was put up, do you?
A. No, sir; but there was good lumber in it.
Q. Whereabouts was the good lumber?
A. In the cornices, wall siding, and floors.
Q. Do you remember of noticing that particular building?
A. No, sir; I know it was painted white.
Q. You say you don't remember of noticing this building any more than it was painted white?
A. Yes.
Q. Do you remember whether it was furnished on the inside by shelves?
A. I think there was.
Q. Was there shelving there when it was occupied as a meat market?
A. I think there was.
Q. Are you positive about it?
A. No; it might have been removed from one side.
Q. Don't you think it might have been taken out on both sides?
A. I don't think it was.
Q. Are you positive about it?
961 A. No, sir; I will not say I am.
Q. Were you ever down in the cellar in the building?
A. Well, I don't remember.
Q. Do you know if there was a cellar under it, of your own knowledge?
A. Yes, sir; because you could see it when it burned.
Q. When was it burned down?
A. I don't know the year.
Q. Who first spoke to you about the value of the building—Mr. Ives?
A. No; I was talking to Mr. Skinner about it.
Q. Have you talked with Mr. Ives about it?
A. Not much.
Q. Did you tell him how much you thought it was worth?
A. No, sir.
Q. Did he tell you how much he thought it was worth?
A. I think he did say how much he valued it at.
Q. Did he tell you how much he sold it for?
A. No, sir; I don't think he did.
Q. Are you related to Mr. Ives in any way?
A. No, sir.
Q. Have you ever bought or sold real estate in Amboy?
A. Yes, sir.
Q. Did you buy any from 1854 to 1860?
A. I bought 2 lots on Jones street.
Q. Have you bought any since then?
A. I bought a lot on the same street.
Q. Did you sell any lot on Jones street?
A. I did.
Q. What year?
962 A. One in the year of 1860, the other in 1865.

Q. Were they improved?
A. Yes, sir; each one had a house on it.
Q. Did you sell the vacant lot for more than you gave for it, including taxes?
A. I didn't make anything on it; it was the half lot where Chapin built his blacksmith shop.
Q. Did you make anything on the other lots you sold?
A. No; I just got my money back; that's all.
Q. How far were those lots from Main St.?
A. One lot was half a block and the other 3 blocks north.
Q. Did you know of any lots being bought and sold on Main St. between 1854 and 1860?
A. Well, there might have been, but I didn't pay any attention to it.
Q. You wasn't interested in the sale of property then?
A. Not very much; yet I remember of lots for $1,000 on the street here.
Q. Where-bouts? What year?
A. On the north side of the street; in 1860, I think.
Q. What size was the lot?
A. 60 feet front.
Q. How deep?
A. About 140 feet.
Q. You never heard of any such lot sold on south side of the street at that rate, did you?
A. Well, *know;* I couldn't tell you about that.
Q. If you remember of a single instance of a lot sold between 1854 and '60 please mention it.
963 A. Well, I don't remember the price, but it strikes me it was worth $1,000 this side of the street.
Q. What was worth $1,000?
A. The bare lot.
Q. How wide and how deep?
A. A lot 50 ft. front and running back to the alley.
Q. Who bought such a lot?
A. There's one owned by Maloney on this side of the street.
Q. Who was this Maloney, and what did he do with the property?
A. He held it for higher figures.
Q. He still holds it, then, for higher figures, don't he?
A. He still owns it.
Q. How far from Jones St. was this lot owned by Maloney?
A. About one block.
Q. Did Maloney ever build on it?
A. No, sir.
Q. Are you still positive that Maloney gave $200 a foot on the south side of Main St.?
A. Yes, sir; I think he did.
Q. Do you know of anybody else who gave $200 a ft.?
A. No, sir; I don't know that I do.
Q. And the only one who ever did give that fails to find a buyer?
A. The rest are all built up.

Q. When ever did he buy it at that rate?
A. I think in '57 or '58; I am not positive what year.

Redirect:

Q. You say you didn't get your money out of the property you sold?

A. I got my money back, but no more.

964 Q. Did you know of anybody who made more than their money who bought in 1854 to 1860?

A. I don't know as I do.

Q. Property had a pretty good boom then, but has since depreciated, has it not?

A. Yes, sir; considerable.

WARREN D. ESTEY.

Subscribed and sworn to before me this sixth day of August, A. D. 1886.

JAMES F. SANFORD,
Special Commissioner.

965 United States Circuit Court, Northern District of Illinois.

JULIA H. MCLEAN *et al.*
vs.
LOT CHADWICK *et al.*

It is hereby stipulated and agreed by and between the parties to the above suit as follows, to wit:

That all depositions taken in said cause and on file may be opened by the clerk on request of the solicitor of either party.

That Charles J. Taylor, administrator of the estate of Edwin W. McLean, deceased, original complainant in said cause, be substituted as complainant in the place and stead of the heirs of said deceased.

That counsel for defendant Lot Chadwick hereby enter their appearance as solicitors for Abigail L. Haskell, administratrix of the said Lot Chadwick, deceased, and that the bill of revivor heretofore filed by complainants stand as a bill of revivor against said administratrix to all intents and purposes as if she were defendant to said bill of revivor, and that the answer of said Lot Chadwick to said last-mentioned bill be treated in all respects as the answer of said administratrix.

966 That the evidence taken by Dwight Heaton, Esq., as ex-examiner, under order of said court enter- Feb'y 1st, 1873, may be reported by J. F. Sanford, Esq., and that the testimony taken and to be taken by said Sanford (as examiner substituted by agreement of the parties to said cause to take said testimony in the place and stead of said Heaton after his death) be reported by said Sanford to all intents and purposes as if he were the examiner named in said rule or order of Feb'y 1st, 1873.

That the court may set this cause for hearing on the sixth (6th) day of October next or as soon thereafter as the court sees fit.

A. C. BARDWELL,
Sol. for Complainants.
S. H. BETHEA,
Sol. for Def'd't.

967 *Witness Fees.*

John C. Jacobs	2 days,	26 miles.
John C. Church	2 "	26 "
Henry Badger	2 "	26 "
Josiah Little	2 "	26 "
Henry Adams	2 "	26 "
William B. Andrews	2 "	26 "
Dr. George Ryan	2 "	26 "
Charles W. Bell	3 "	26 "
Chester Badger	2 "	26 "
George F. Woods	2 "	26 "
Phillip Clark	2 "	26 "
James S. Briggs	2 "	1 "
Warren D. Estey	2 "	1 "

Special Examiner's Fees.

87 pages, @ 30 cts. per page $26 10

Testimony taken by Dwight Heaton, as special examiner, and reported herewith, 303 pages.

968 DIXON, ILL., *November* 11, 1886.

M——,

Office of the sheriff of Lee Co.

Defendants,

To Isaac Edwards, Dr.

To fees due Lee county for services rendered by sheriff:

When service was rendered.	Title of case.	Nature of writ.	Am't earned.	Am't paid.
June 10, 1885.	McLean *vs.* Chadwick.	Subp's.	$15.05.	

ISAAC EDWARDS, *Sh'ff.*

STATE OF ILLINOIS, *Lee County,* } *ss:*

The people of the State of Illinois to Charles W. Bell, John B. Warnick, Chester Badger, R. H. Mellen, S. C. Stricklin, C. P. Miller, & C. W. Denning, Greeting:

You are hereby commanded personally to be and appear before me, at my office, in Dixon, in said county, on the 26 day of June,

A. D. 1885, at the hour of two o'clock p. m., to testify in a certain case now pending and undetermined in the United States circuit court, northern district Illinois, wherein Julia H. McLean *et al.* are plaintiff- and Sarah L. Chadwick *et al.* are defendants, on the part of the defendants, and this you will in nowise omit under the penalty of the law.

Given under my hand this 23 day of June, A. D. 1885.

JAMES F. SANFORD,
Special Commissioner.

969 STATE OF ILLINOIS, } ss:
Lee County, }

I have executed the within writ this 25 day of June, A. D. 188–, by reading the same to and in the presence and hearing of C. W. Bell, John Warnick, Chester Badger, S. C. Strickland, C. B. Miller, C. W. Denning, R. H. Mellen.

Fees, services	1 50
18 miles' travel	3 90
Return	3 90
Total	10 30

Rec'd my fees.

NORMAN E. JEWETT, *Constable.*

970 EXHIBIT 6 OF DEFENDANTS' TESTIMONY. James F. Sanford, Examiner.

STATE OF ILLINOIS, } ss:
County of Lee, }

In the Circuit Court of Lee County. December Term, A. D. 1869.
In Chancery.

To the Hon. William W. Heaton, judge of the 22nd judicial circuit, in chancery sitting:

Humbly complaining, showeth unto your honor your orator, Lot Chadwick, that heretofore, to wit, on the fourteenth day of October, A. D. 1853, one John F. Clapp, being then seized in fee of and in the following-described real estate, situated in the said county of Lee, to wit:

The east half of the southwest quarter of section number (28) twenty-eight and the east half of the northwest quarter of section number (33) thirty-three, all in township number (21) twenty-one, of range number (11) eleven east, of the fourth principal meridian, did on said day sign, seal, execute, and deliver to one Jason Clapp and one Edwin Clapp a warranty deed, in and by which he conveyed to them his title to said lands and which said deed was, on October 29th, A. D. 1853, filed for record in the recorder's office
971 in and for said county of Lee and duly recorded in said office in Book J of Deeds, at page 88, as will more fully appear from

a certified copy of said record, to which your orator prays leave to refer.

And your orator further shows that on the 29th day of October, A. D. 1853, one Lewis Clapp, being then the owner in fee of the following-described real estate, also situate in said county of Lee, to wit:

The northeast quarter of section number (33) thirty-three, in township number (21) twenty-one, of range number (11) eleven east, of the fourth principal meridian, did on that day sign, seal, execute, and deliver a warranty deed, in and by which he conveyed his title to said land to the said Edwin Clapp, which said deed was afterwards, to wit, on the same day, filed for record in the said recorder's office, and was duly recorded there in Book J, on page 89, as will more fully appear from a certified copy of said record, to which your orator prays leave to refer.

And your orator further shows that afterwards, to wit, on or about the 28th day of November, A. D. 1855, the said Jason Clapp made, executed, and delivered to one Ruggles W. Clapp a warranty deed, by which he conveyed to the said Ruggles the title to one undivided half of the two tracts of land first hereinabove described
972 (together with other land in the said deed described), which deed was duly acknowledged and was filed for record in said recorder's office in Lee county on the 5th day of December, A. D. 1855, and was recorded in said office in Book M of Deeds, on pages 525 and 526, to a certified copy of which your orator prays leave to refer.

And your orator further shows unto your honors that on the 28th day of November, A. D. (1855) eighteen hundred and fifty-five, the said Edwin Clapp and Mary M. Clapp, his wife, did sign, seal, execute, and deliver a certain warranty deed, in and by which they conveyed to the said Ruggles W. Clapp their title in and to the one undivided half of the said first hereinabove-named parcels of land, and also all of the said parcel of land next hereinabove described—that is to say, the undivided half of the east half of the northwest quarter of section number (33) thirty-three and the undivided half of the east half of the southwest quarter of section number (28) twenty-eight and all of the northeast quarter of section number (33) thirty-three, all of said parcels of land being in township number (21) twenty-one, of range number (11) eleven east, of the 4th principal meridian; which said deed was executed by
973 the said Edwin Clapp, Mary M. Clapp, in Berkshire county, in the State of Massachusetts, and the execution thereof was acknowledged by the said Edwin Clapp and Mary M. Clapp before John A. Walker, Esquire, who was then and there an acting justice of the peace in and for said Berkshire county, on the said 28th day of November, A. D. 1855, and was by said Ruggles W. Clapp filed for record in the recorder's office in said county of Lee on the fifth day of December, A. D. eighteen hundred and fifty-five; and your orator further avers and shows unto your honor that afterwards, to wit, on the tenth day of January, A. D. (1868) eighteen hundred and sixty-eight, the said Ruggles W. Clapp and his wife

signed, sealed, executed, and delivered to one Henry Clapp their deed, in and by which they conveyed to the said Henry all their right, title, and interest in and to all the lands hereinabove described; which deed was duly acknowledged and was filed for record in said recorder's office on the 30th day of January, A. D. 1868, and was recorded in Book 17 of Deeds, at page 51, as by reference to said deed or to a copy thereof, hereto attached and marked Exhibit A, and which your orator prays may be taken as a part of this bill, with leave to refer thereto, will more fully and at large ap-
974 pear; and your orator further avers and shows unto your honor that afterwards, to wit, on the first day of March, A. D. eighteen hundred and sixty-nine (1869), the said Henry Clapp and Sara A., his wife, signed, sealed, executed, and delivered their deed, by which they conveyed to your orator all the said parcel of land hereinabove described, the execution of which said deed was duly acknowledged by the said Henry Clapp and wife, and the said deed was filed for record in said recorder's office on the 30th day of March, A. D. 1869, and was recorded in said office in Book Number 14, at page 547, as by reference to a copy of said deed, hereto attached and marked Exhibit B, will more fully and at large appear.

And your orator further avers that ever since the date of the execution of said deed he has been in the quiet and peaceable possession of all of said lands either in person or by his tenants, and that he is now the sole legal owner thereof, and that no other person hath any legal or equitable title to said lands or to any part thereof.

And your orator further, upon information and belief, avers and charges the fact to be that during all the time from the time that the Government of the United States parted with its title to
975 said lands he, Henry Clapp, had been and was until the date of the making of the said deed by the said Henry to your orator the equitable owner of all said lands, and had been in the actual occupancy thereof during all said time.

And your orator further, upon information and belief, avers and charges the fact to be that after the said deed so as aforesaid made by the said Edwin Clapp and Mary M. Clapp, his wife, to the said Ruggles W. Clapp, and after the said deed had been by them delivered to said Ruggles and after the said — had been by the said Ruggles filed for record in the said recorder's office and before the same had been recorded in said office, the said deed was by some person or persons unknown to your orator abstracted and taken from said recorder's office and was afterwards by such person or persons or by person or persons acting under the instigation of the party or parties who had so abstracted said deed from said office mutilated and defaced by drawing certain ink lines across and over the signatures of the said Edwin Clapp and Mary M. Clapp.

And now as it is, may it please your honor, that the said Edwin Clapp and Mary M. Clapp neglect and have neglected, tho' often requested, etc., to make, execute, and deliver to the said
976 Ruggles W. Clapp or to the said Henry Clapp or to your orator, granters as aforesaid, a good and sufficient deed in place of the deed so mutilated and defaced, by means whereof your

orator is unable to perfect his title of record to said lands embraced and described in the said mutilated and defaced deed; all which is contrary to equity and good conscience and tend to the manifest wrong and injury of your orator in the premises; in tender consideration of which and inasmuch as your orator is remediless in the premises at and by the strict rules of the common law and can only have adequate relief in a court of chancery, where matters of this sort are only proper, cognizable, and relieveable, your orator prays that the said Edwin Clapp and Mary M. Clapp be made defendants herein, and that the- be summoned personally to be and appear before this honorable court on the first day of the next term thereof, then and there full, true, direct, and perfect answer to make to all and singular the matters and things herein stated or charged or intended so to be, and that as fully and particularly as if each of the same were here repeated and they and each of them distinctly interro-
977 gated thereto, but not under oath, the oath of each of said defendants to such answer being expressly waived.

And that on the hearing of this case it be by the court ordered and adjudged and decreed that the title which the said Edwin Clapp had and held in and to the undivided half of the east half of the southwest quarter of section number (28) twenty-eight and the undivided half of the east half of the northwest quarter of section number (33) thirty-three and all of the northeast quarter of section thirty-three, all in township number (21) twenty-one of range number (11) eleven, in said county of Lee, passed to Ruggles W. Clapp and was vested in him on the twenty-eight day of November, A. D. eighteen hundred and fifty-five, and that the said deed of said premises so made by the said Edwin Clapp and the said Mary M. Clapp on the 28th day of November, A. D. 1855, to the said Ruggles W. Clapp be admitted to record in the recorder's office of said Lee county, with the same effect, to all intents and purposes, as if the signatures had not been defaced, and that the master in chancery of this county be ordered, directed, and decreed to execute and deliver, on behalf of said Edwin Clapp and Mary M. Clapp, a good and sufficient deed conveying to your orator all the right, title,
978 and interest which they had in and to the lands last aforesaid on said 28th day of November, A. D. 1855, subject to any rights which may have subsequently accrued in favor of any third person or persons, should any such rights exist.

And that your orator may have such further and other relief in the premises as to your honor shall seem right and as in equity and good conscience he may show himself, in the judgment of this honorable court, entitled to.

And, as in duty bound, your orator will ever pray, etc.

LOT CHADWICK,
By JOHN V. EUSTACE, *Att'y.*

EUSTACE, BARGE & DIXON,
Solicitors and of Counsel for Complainants.

STATE OF ILLINOIS, } ss:
County of Lee, }

Lot Chadwick, the said complainant, being duly sworn, on his oath saith that he knows the contents of the foregoing bill, and that the matters and things therein stated as of his own knowledge are true, and as to all the matters therein stated he believes them to be true.

LOT CHADWICK.

Subscribed and sworn to before me this 15th day of September, A. D. 1869.

ALBERT Z. BODINE, [SEAL.]
Justice of the Peace.

979 EXHIBIT A.

Filed for record January 30th, 1868.
Recorded in Book 17, page 51.

This indenture, made this tenth day of January, in the year of our Lord one thousand eight hundred and sixty-eight (A. D. 1868), between Ruggles W. Clapp and Emily B. Clapp, his wife, of the city and State of New York, and Henry Clapp, of Bradford, Lee county, Illinois, of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of one dollar ($1.00), lawful money of the United States of America, in hand paid by the said party of the second part at and before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, have remised and quitclaimed and by these presents do remise and quitclaim unto the said party of the second part and to his heirs and assigns forever all of the east half of the southwest quarter of section twenty-eight (28); also all of the east half of the northwest quarter of section thirty-three (33); also all the northeast quarter of section number thirty-three (33); also all of the northeast quarter of the southeast quarter of section thirty-three (33); also all the west half of the northwest quarter of
980 section thirty-four (34); also all of the northwest quarter of the southwest quarter of section thirty-four (34), in township twenty-one north, range eleven east, of the fourth principal meridian, in the county of Lee, State of Illinois—

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in — wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest in the said property, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the above-described premises and every part and parcel thereof, with the appurtenances:

To have and to hold the same, all and singular the above mentioned and described premises, with the appurtenances, to the said party of second part, his heirs and assigns forever.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signed) RUGGLES W. CLAPP. [SEAL.]
EMILY B. CLAPP. [SEAL.]

[50-c. revenue stamp, cancelled.]

981 Sealed and delivered in presence—as to Ruggles W. Clapp—
CHARLES NETTLETON.
NATHANIEL GILL.

ORSON M. PEARL. } Attest E. B. C.
ALMYRA RYAN. }

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Charles Nettleton, a notary public in and for the city and county of New York, State of New York, do hereby certify that Ruggles W. Clapp, who is personally known to me to be the real person whose name is subscribed to the within indenture as having executed the same, appeared before me this day in person and acknowledged that he signed and delivered the said indenture as his free and voluntary act for the uses and purposes therein set forth, and thereby conveyed all his right, title, and interest to the premises described in said deed, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so called.

Given under my hand — notarial seal this 11th day of Jan-
982 uary, A. D. one thousand eight hundred and sixty-eight (A. D. 186–).

(Signed) CHARLES NETTLETON,
Notary Public in and for the City and County of New York, State of New York.

STATE OF MASSACHUSETTS, }
Hampshire County. }

JANUARY 20TH, 1868.

Then Emily B. Clapp, within named, personally appeared and acknowledged the within instrument to be her free act and deed before me—

ORSON M. PEARL,
Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS, } ss:
Hampshire, }

Probate Court.

I, Luke Lyman, register of the probate court for said county of Hampshire, the same being a *part* of record, certify that Orson M. Pearl, Esq., whose signature is affixed to the certificate on the paper hereto annexed, was at the day thereof a justice of the peace, duly commissioned and acting under the authority of this Common-

wealth, and that full faith and credit is and ought to be given to his acts and attestations done in that capacity, and that I am well acquainted with the handwriting of the said Orson M. Pearl and believe his signature to said certificate is genuine.

983 In testimony whereof I have hereunto set my hand and affixed the seal of said court this twenty-third day of January, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL OF PROBATE COURT.] LUKE LYMAN,
Register and Having Custody of the Seal.

[Rev. stamp, .05.]

Filed January 31st, A. D. 1868, at 12.30 o'clock p. m.

EXHIBIT B.

Filed for record March 3d, 1869, at 3 p. m., Book 14, page 547.

This indenture, made this first day of March, in the year of our Lord one thousand eight hundred and sixty-nine, between Henry Clapp and Sarah A. Clapp, his wife, of the county of Lee and State of Illinios, party of the first part, and Lot Chadwick, of the county and State aforesaid, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of ten thousand dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released,

984 conveyed, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, convey, alien, and confirm, unto the said party of the second part and to his heirs and assigns forever all the following-described lot, piece, or parcel of land, situated in the town of Bradford, in the county of Lee and State of Illinois, and known and described as follows, to wit:

The west half of the northwest quarter and the northwest quarter of the southwest quarter of section number thirty-four (34), and the northeast quarter of the southeast quarter of section number thirty-three (33), and the northeast quarter of section number thirty-three (33), and the east half of the northwest quarter of section number thirty-three (33), and the east half of the southwest quarter of section number twenty-eight (28), in township number twenty-one (21) north, of range number eleven (11) east, of the 4th principal meridian, containing four hundred and eighty acres of land, more or less, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or de-

985 mand whatsoever of the said part- of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises above bargained and described, with the appurtenances,

unto the said party of the second part, his heirs and assigns forever; and the said Henry Clapp and Sarah A. Clapp, his wife, party of the first part, hereby expressly waive, release, and relinquish unto the said party of the second part, his heirs, executors, administrators, and assigns, any and all right, title, claim, interest, and benefit whatever in and to the above-described premises and each and every part thereof which is given by or results from all laws of this State pertaining to the exemption of homesteads; and the said Henry Clapp and Sarah A. Clapp, his wife, party of the first part, for their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents they were well seized of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law in fee simple, and have good right, full
986 power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind and nature soever; and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every other person or persons lawfully claiming or to claim the whole or any part thereof the said part- of the first part shall and — forever defend.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

(Signed) HENRY CLAPP. [L. S.]
SARAH A. CLAPP. [L. S.]

Signed, sealed, and delivered in presence of—
ALBERT Z. BODINE.

STATE OF ILLINOIS, } ss:
Lee County, }

I, Albert Z. Bodine, a justice of the peace in and for said county, in the State aforesaid, do hereby certify that Henry Clapp and Sarah A. Clapp, personally known to me as the same
987 persons whose names are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth; and the said Sarah A. Clapp, wife of the said Henry Clapp, having been by me examined separately and apart and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me made known and fully explained to her, and she also by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned and also all her rights and advantages under and by virtue of all laws of this State relat-

ing to the exemption of homesteads without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this first day of March, A. D. 1869.

(Signed) ALBERT Z. BODINE, *J. P.* [SEAL.]

Endorsement on back: Filed September 14th, 1869. J. N. Hyde, clerk.

988 *Answer of Edwin Clapp to Original Bill.*

STATE OF ILLINOIS, } ss.:
Lee County, }

In the Circuit Court, on Chancery Side. Vacation after December Term, A. D. 1869.

LOT CHADWICK
vs.
EDWIN CLAPP & MARY M. CLAPP. } Answer of Edwin Clapp.

The answer of Edwin Clapp to the bill of complaint of Lot Chadwick, complainant.

This respondent, saving and *and* reserving unto himself all manner of advantage or benefit of exception which may be had or taken to said bill of complaint by reason of the manifold error-, imperfections, and uncertainties therein, for answer thereto or to so much and such portions thereof as he is advised by his counsel is or are material for him to make answer unto, this respondent, answering, says it is true that on the fourteenth day of October, A. D. 1853, one J. T. Clapp was seized in fee of the east half of the southwest quarter of section number (28) twenty-eight and the east half of the northwest quarter of section number thirty-three, all in township number twenty-one, of range eleven east, of the fourth prin-
989 cipal meridian, in the county of Lee and State of Illinois, as alleged in bill of complaint.

It is likewise true that on said last-named day that John F. Clapp conveyed said lands to Jason Clapp and this respondent by warranty deed. It is also true that said deed was filed for record and was afterward recorded on the date, at the place, and in the manner specified in complainant's bill.

This respondent, further answering, admits to be true, as alleged in bill, that on the twenty-ninth day of October, A. D. 1853, one Lewis Clapp was the owner in fee of the northeast quarter of section number thirty-three, in township number twenty-one, of range number eleven east, of the fourth principal meridian, in said Lee county. It is also true that on said last-named day said Lewis Clapp by warranty deed conveyed said last-named lands to this respondent. It is likewise true that said last-named deed was filed for record and was afterward recorded on the date, at the place, and in the manner specified in complainant's bill.

This respondent, further answering, admits that on the twenty-eighth day of November, A. D. 1855, said Jason Clapp made and delivered a warranty deed to one Ruggles W. Clapp, conveying to said Ruggles an undivided half of the east half of the northwest quarter of section number thirty-three and the east half of the southwest quarter of section twenty-eight, all in township twenty-one, range eleven east, of the fourth principal meridian, in said Lee county, together with other lands in said deed described, as stated in said bill of complaint.

990

Respondent believed until A. D. 1860, as will more fully appear hereafter, that said last-named deed had never been filed for record, and although he has learned that a copy of said deed appears upon the record, as stated by complainant in his bill, yet he reserves the right to show, if he can, by proofs that such record is a fraud upon respondent. This respondent, further answering, says it is true that on or about the twenty-eighth day of November, A. D. 1855, this respondent and his wife, Mary M. Clapp, did sign, seal, execute, and deliver a certain warranty deed, in & by — they conveyed to the said Ruggles W. Clapp all their title in and to the undivided half of certain lands, which lands this respondent believes to be correctly described in that part of complainant's bill stating said conveyance by this respondent and wife to said Ruggles W. Clapp, but, inasmuch as respondent has not been — the possession or — custody of nor access to said deed, he prefers to leave the description of the lands embraced therein open to proof.

991

This respondent is not certain whether said deed was ever filed for record, as stated in said bill. This respondent never had any reason for believing it had been so filed, and never heard of such filing save by complainant's bill; that if said deed ever was so filed for record the same was a gross fraud on this respondent, as he hopes to be able to establish, but, inasmuch as complainant has sworn that said deed was so filed for record, respondent does not feel warranted in positively contradicting the same, but insists on complainant's establishing the fact by competent proof.

This respondent, further answering, says that he has no knowledge, save as he has recently been told, of the execution and delivery of a conveyance of said premises or any part thereof by the said Ruggles W. Clapp to the said Henry Clapp, nor of the execution and delivery of a conveyance from the said Henry Clapp to complainant, as stated in said bill, and therefore denies the same and calls for proofs thereof.

992

Respondent, however, avers that if such conveyances were made they were a gross fraud upon respondent and one Ebenezer Clapp, the father of said Henry and Ruggles W.

Respondent avers that said Ruggles W. Clapp and said Henry Clapp are brothers; that the present wife of said Henry Clapp is the daughter of complainant. Although in the copy annexed to complainant's bill of the pretended conveyance from said Henry Clapp to complainant said conveyance is expressed to be for and in consideration of ten thousand dollars in hand paid, yet respondent has

been informed, verily believes, and charges the fact to be that such expression of such consideration is a falsehood.

Respondent denies that said complainant is a *bona fide* owner of the real estate in said bill describ-, but charges that, on the contrary, said complainant has combined and confederated with said Henry Clapp, his said son-in-law, to defraud respondent of his lawful
993 and just rights and interests in and to said real estate. He also denies that complainant has been in the possession of said premises, by his tenants or otherwise, and if complainant has presumed to lease any portion of said premises to any person his action in that regard was a willful fraud upon respondent.

Respondent, further answering, says he believes it to be true that said Henry Clapp has had some sort of interest in some or all said lands described in said bill ever since the United States parted with the title thereto; yet it is not true that said Henry Clapp has been in the actual occupancy of all or any portion of said lands during all that time, but, on the contrary, this respondent has had possession and control of said lands for several years last pas*sed* and through his agent has leased the same to various parties, all of which respondent believes was well known to complainant when he made the contrary statement in his said bill of complaint.

This respondent, further answering, says that if said deed so as aforesaid made, executed, and delivered by respondent and his wife
994 to the said Ruggles for record, and if before said deed had been recorded it was by some person or persons abstracted and taken from the recorder's office, and was afterward by such person or persons or by some person or persons acting under the instigation of the party or parties who had so abstracted said deed from said office mutilated and defaced by drawing certain ink lines across and over the signatures of the said Edwin Clapp and Mary M. Clapp in manner and form as charged in said bill, your respondent can only say that he has no knowledge on the subject save what is derived from said bill, and, as the story is so improbable, he denies the truth thereof and calls for proof.

Respondent, further answering, says that it is not true that he ever neglected to make, execute, and deliver to said Ruggles W. Clapp, to said Henry Clapp, or to said complainant a good and sufficient deed in place of the deed so mutilated and defaced, as stated in said bill of complaint; nor is it true that it was the duty of respondent to make such deed, as will more fully appear
995 hereafter; nor is it true that said Ruggles W. Clapp, said Henry Clapp, said complainant, any person for them, or any person whatever ever requested respondent to make such deed in place of the deed so mutilated and defaced, notwithstanding said complainant in his said bill sworn to by him positively states that this respondent had been often requested.

Respondent, further answering, says that said Jason Clapp and respondent took the title to said lands, as in said bill and as hereinbefore stated, in trust to secure advances to said Henry Clapp and interest thereon, and that it was understood that whenever said Henry refunded said advances and interest thereon that the title to

said lands should be conveyed to said Henry or to whomsoever he might direct.

That at or about the time said Jason Clapp and respondent conveyed said lands to said Ruggles W. Clapp, as in said bill and as hereinbefore stated, said advances and interest thereon were refunded to said Jason and to respondent; whereupon said land, by
996 direction of said Henry Clapp, was conveyed to said Ruggles W. Clapp.

Respondent, further answering, says that some time after the conveyance as aforesaid to said Ruggles W. Clapp and, as near as respondent can recollect, in the month of September, in the year A. D. 1856, said Ruggles W. Clapp redelivered to respondent said conveyance so as aforesaid executed and delivered by said Jason Clapp and by respondent to said Ruggles W., said Ruggles W. stating to respondent at the time of such redelivery of said deeds that they, said deeds, had not been recorded, and that the title to said lands was still in respondent and said Jason Clapp, and that respondent was to hold said deeds, and that said title was to remain in said Jason Clapp and respondent to secure the payment of twenty-six hundred dollars advanced by one Ebenezer Clapp, father of said Ruggles W. and Henry, to said Henry Clapp, which sum said Henry agreed to pay to said Jason Clapp and respondent in two years from the eighteenth day of July, A. D. 1856, with interest at
997 the rate of ten per cent. per annum. Respondent, not doubting the truth of said statements of said Ruggles W., not suspecting that said *said* deeds or either of them had been recorded, and willing to again oblige said parties, accepted said trust and filed said deeds among his other papers.

Respondent, further answering, says that during all the time covered by the transactions mentioned in complainant's bill respondent's residence has been in the State of Massachusetts; that he has never been in the State of Illinois; that he never saw the lands in said bill referred to, but always relied implicitly on the statements of said Henry and said Ruggles W. Clapp in reference thereunto and in reference to the title thereof until the year A. D. 1860, when he discovered the intention of the said Henry and the said Ruggles W. Clapp to swindle respondent and said Ebenezer Clapp, their father, and that the deed from said Jason to said Ruggles W. had been recorded.

Respondent, further answering, says that some time after the redelivery of said deeds by said Ruggles W. Clapp to respondent as aforesaid respondent appointed Mr. Cephas Clapp, of Lee
998 Centre, his agent to look after said lands the rents and taxes thereof.

That said agent paid the taxes for this respondent, but the proceeds of said land rents and income said Henry Clapp, who during all the time resided on or near the land, in some way managed to get hold of and convert to his own use.

Respondent further states that complainant during all this time resided in the immediate neighborhood of these lands; that the fact of respondent's having an interest in said lands was and for the last

ten years has been notorious in said neighborhood, and respondent verily believes that complainant had notice of respondent's said interest at the time said complainant accepted said deed of said lands from said Henry, if said deed was in fact ever made, and that said complainant accepted said deed, if at all, with a view to aid said Henry Clapp in an attempt to defraud respondent and said Ebenezer Clapp.

Respondent further states that on the third day of Novem-
999 ber, A. D. 1866, said Henry Clapp asked of respondent a loan of one hundred and thirty-nine dollars on the security of said lands and the title thereto so held by respondent; that to accom-odate said Henry, not thinking that said deed of respondents to said Ruggles W. had been filed for record, respondent loaned to said Henry said sum of one hundred and thirty-nine dollars, relying as security therefor on the title which respondent held to said land, and which sum said Henry Clapp promised to pay, with interest, on demand.

Respondent further states that no part of said sum of one hundred and thirty-nine dollars nor any part of the interest thereon has been paid, no- has any portion of the principal or interest of said sum of twenty-six hundred dollars been paid except the sum of thirty dollars Oct. 30th, A. D. 1863, and the sum of twenty dollars Oct. 30th, 1864.

Respondent, further answering, says that in A. D. 1860 he was informed that said Henry Clapp and said Ruggles W. Clapp had told him a falsehood in reference to the recording of said deed so as aforesaid executed and delivered by the said Jason Clapp
1000 to the said Ruggles W. Clapp and which had been redelivered by said Ruggles W. to respondent as aforesaid, whereupon respondent forwarded said deed, also said deed from respondent to said Ruggles W. Clapp, to his said agent, Cephas Clapp, with instructions to him to investigate the matter; that while said Cephas Clapp was in possession of said deeds said Henry Clapp called at the residence of said Cephas and asked the permission of said Cephas to take said deeds for the purpose of copying them.

That said Cephas refused such permission, but informed said Henry that he could copy them at *at* the house of said Cephas; that thereupon said Henry went away and soon returned with one A. Z. Bodine, a justice of the peace and resident of said Lee Centre, and asked for said deeds for the purpose of copying them. Said Cephas handed said deeds to said Henry and Bodine for the purpose of copying them at the house of said Cephas, but with the injunction that they should not be taken away.

Said Cephas was called out of his house while said Henry
1001 and said Bodine were copying said deeds and on his return discovered that said Henry and said Bodine had left, and that said Henry had taken said deeds with him.

Said Cephas went immediately to the residence of complainant, then and now the father-in-law of said Henry, where he supposed he would find said Henry, for the purpose of taking from him said deeds; that said Cephas was informed by the family of complainant that said Henry had gone to his home, which was then on said lands

in said bill described, but said Cephas was afterward informed by some other person or the fact was that said Henry had gone to Dixon and taken said deeds with him.

That said Cephas afterwards demanded a return of said deeds by said Henry to him, but said Henry refused to return either of them, and neither said Henry nor any other person has ever returned said deeds or either of them to said Cephas or respondent nor to any person for them or either of them; and respondent avers that said deeds were obtained from his said agent by fraud and with
1002 a view to defraud respondent and said Ebenezer Clapp, and that the withholding them now from respondent is fraudulent.

Respondent insist- that he has a right to a return of said deeds, and if in possession of complainant or his solicitors, as he supposes they are, prays the court to compel them to surrender said deeds to respondent.

Respondent further insists that it was improper to join the said Mary M. Clapp as party defendant in said bill—first, because, as the bill shows, at the time of her execution of the conveyance to said Ruggles W. Clapp she was and still is a married woman, and the relief sought of her could not properly be granted because of her coverture; and respondent hopes the court will give the same effect to these objections as if they had been presented by demurrer.

Respondent further avers that said Ebenezer Clapp is now living; that he has an interest in the result of this suit and should have been made a party thereto.

Respondent, having now answered all and singular the alle-
1003 gations of said bill—without this, that any matter or thing in said bill contained material or necessary for this respondent to make answer unto and not herein well and sufficiently answered, traversed, confessed, avoided, or denied is true to the knowledge or belief of this respondent—prays to be hence dismissed with his reasonable costs most wrongfully sustained.

EDWIN CLAPP.

B. H. TRUSDELL,
Sol. & Counsel for Respondent.

Endorsed: Filed February 9th, A. D. 1870. J. N. Hyde, clerk.

STATE OF ILLINOIS, }
Lee County. }

In Chancery. In the Circuit Court of Lee County, of the June Term, A. D. 1871.

The replication of Lot Chadwick, complainant, to the answer of Edwin Clapp.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the
1004 manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto saith that he does and will aver and maintain and prove said bill to be

true, certain, and effectual in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

EUSTACE, BARGE & DIXON,
Solicitor for Complainant.

Endorsed, to wit: Filed this 22nd day of June, 1871. J. N. Hyde, clerk.

1004½ *Cross-Bill.*

STATE OF ILLINOIS, }
Lee County. }

In the Circuit Court, to the December Term, A. D. 1870.

EDWIN CLAPP
vs.
LOT CHADWICK *et als.* } In Chancery. Cross-Bill.

To the Hon. William W. Heaton, judge of the 22nd judicial circuit of the State of Illinois and of said Lee county circuit court, in chancery sitting:

Humbly complaining, showeth unto your honor your orator, Edwin Clapp, of Pittsfield, Massachusetts, that he is the son of one Jason Clapp, who for many years prior to his death was a resident of Massachusetts, and who died October twentieth, A. D. 1868; that one Ebenezer Clapp, a resident of Massachusetts, was a brother of said Jason; that said Ebenezer is the father of one Henry Clapp, a resident of said Lee county, and one Ruggles Woodbridge Clapp, and that the wife of said Henry Clapp is the daughter of one Lot Chadwick.

Your orator further showeth unto your honor that, on the fourteenth day of October, A. D. 1853, one John F. Clapp con-
1005 veyed to said Jason Clapp and your orator the east half of the southwest quarter of section twenty-eight and the east half of the northwest quarter of section thirty-three; that on the twenty-ninth day of October, A. D. 1853, one Lewis Clapp conveyed to your orator the northeast quarter of section thirty-three, all said lands lying and situate in township twenty-one, range number eleven east, of the fourth principal meridian, in said Lee county; that both said conveyances were duly filed for record in the recorder's office of said Lee county on the twenty-ninth day of October, A. D. 1853, and were duly recorded.

Your orator further shows unto your honor that said Jason and

your orator took the title to said lands, as before stated, in trust to secure certain advances of money made by them to said Henry Clapp, and when said advances should be refunded, with the interest, then to convey said real estate to said Henry or to whomsoever he might direct; that on or about the twenty-eight- day of November, A. D. 1855, said Henry refunded said advances, with
1006 the interest, and thereupon, at the request of said Henry and Jason Clapp, conveyed to said Ruggles Woodbridge Clapp an undivided half of said east half of southwest quarter of said section twenty-eight and — undivided half of said east half of northwest quarter of section thirty-three; also the northwest quarter of the southwest quarter of section thirty-four, the west half of the northwest quarter of said section thirty-four, and the northeast quarter of the southeast quarter of section thirty-three; that all said lands then conveyed by said Jason to said Ruggles Woodbridge were embraced in one deed; that on or about said twenty-eighth day of November, A. D. 1855, your orator, at the request of said Henry, by one deed conveyed to said Ruggles Woodbridge an undivided half of said east half of the southwest quarter of section twenty-eight; an undivided half of said east half of the northwest quarter of section thirty-three; also the northeast quarter of said section thirty-three, all said lands being situate in said township twenty-one north, range eleven east, of the fourth principal meridian, in said Lee county.

1007 Your orator further showeth unto your honor that said Henry Clapp was the equitable owner of all said lands so as aforesaid conveyed by said Jason and by your orator *by* said Ruggles Woodbridge; that said Ruggles Woodbridge, as your orator verily believes, at no time had any beneficial interest in said lands nor in any part thereof, but took the title to said lands, as before stated, as a naked trustee for said Henry.

Your orator further showeth unto your honor that afterward, to wit, on or about the eighteenth day of July, A. D. 1856, the said Henry applied to his father, the said Ebenezer, for a loan of twenty-six hundred dollars for two years, with annual interest at ten per cent., and offered as security for said loan said lands so as aforesaid conveyed by said Jason and your orator to said Ruggles Woodbridge; that on said eighteenth day of July, A. D. 1856, said Ebenezer loaned to said Henry, on the terms so as aforesaid proposed by him, the said sum of twenty-six hundred dollars; that the said Ebenezer was then, to a very considerable extent,
1008 incapaci-ated for business by infirmities incident to old age, and it was arranged by and between him, said Henry and said Ruggles Woodbridge, that said Jason Clapp and your orator should receive the securities for said loan as trustees for said Ebenezer; that said Henry should make his note for said sum so loaned, payable in two years from its date, to the order of said Jason and your orator, at the Agricultural Bank, Pittsfield, Massachusetts, with annual interest at ten per cent., and that the said Ruggles Woodbridge should deposit with said Jasen and your orator the deed made by said Jason, also the deed made by your orator to said Ruggles Woodbridge, as herein-

before stated, and that said Jason and your orator should hold said deed and the title to the real estate therein described to secure the payment of said loan; that said Henry made his note in accordance with said agreement, bearing date said eighteenth day of July, A. D. 1856; that afterward said note was delivered to your orator, and on or about the twenty-second day of September, A. D.
1009 1856, your orator received from said Ruggles Woodbridge said two conveyances of land—the one made by said Jason to said Ruggles Woodbridge, the other by your orator to said Ruggles Woodbridge—as hereinbefore stated; that said note and said deeds were delivered to your orator in pursuance of said arrangement that said Jason and your orator should act as trustees for said Ebenezer. Your orator, in receiving said note and said deeds and being informed that he and the said Jason had been selected as trustees for said Ebenezer in said transaction, concluded to act in that capacity and filed said note and said deeds with his other papers.

Your orator further showeth unto your honor that on receiving said deeds he was informed by the said Ruggles Woodbridge that they had not been recorded, and that said return of said deeds left the title to the lands therein described in said Jasen and your orator.

Your orator further showeth to your honor that on the receipt of said deeds and said assurances from said Ruggles Woodbridge your orator had some confidence in the integrity of said Henry
1010 and Ruggles Woodbridge; at least did not then suspect them or either of them of a design or desire to swindle their father, the said Ebenezer; and your orator then believed that neither of said deeds had been recorded, and, not being a lawyer nor deeming it necessary to consult a lawyer, also believed that a redelivery of said deeds, as before stated, did again vest the legal title to the lands therein described in the said Jasen and your orator.

Your orator further showeth unto your honor that until on or about the tenth day of December, A. D. 1860, he had no knowledge that either said deed from said Jasen or said deed from your orator to said Ruggles had been recorded; that on said tenth day of December, A. D. 1860, a relative of your orator, residing in said Lee county, gave your orator such information by letter.

Your orator further showeth unto your honor that said Henry Clapp, after *after* your orator had received such information and down to a recent period, from time to time acknowledged his indebtedness to his said father, the said Ebenezer,— acknowledged that your orator still held the legal title to all said lands so as aforesaid conveyed by
1011 said Jasen and by your orator to said Ruggles Woodbridge in trust to secure the payment of said indebtedness; and your orator, notwithstanding the prior exhibition of bad faith on the part of said Henry and said Ruggles Woodbridge, could not believe that they intended to wholly deceive your orator and rob their father, the said Ebenezer, and hence your orator was again lulled into a feeling of fancied security.

Your orator further showeth unto your honor that on or about the ninth day of November, A. D. 1860, he appointed one Cephas Clapp, a resident of Lee Centre, in said Lee county, his agent to rent said

lands, receive the rents, pay the taxes thereon, and to have a general supervision thereof; that said Cephas acted in that capacity from the date of his said appointment until about the time of the conveyance of said lands by said Henry to Lot Chadwick, his father-in-law, hereafter to be more fully stated; that said Henry acknowledged the said authority of said Cephas in reference to said lands; but
1012 while he allowed to said Cephas a general supervision of said lands, the payment of taxes thereon, and the making of repairs, yet the said Henry managed, in one way or another, to receive to his own use nearly all the rents and profits of said land.

Your orator further showeth unto your honor that on or about the first day of April, A. D. 1864, he sent to his said agent, the said Cephas, said deed so as aforesaid made by the said Jasen to the said Ruggles, likewise said deed so as aforesaid made by your orator to said Ruggles, that the said Cephas might be better able to protect the interest your orator so held in said lands in trust for said Ebenezer as aforesaid.

Your orator further showeth unto your honor that on the third day of November, A. D. 1866, said Henry visited your orator, at Pittsfield, Massachusetts, and while there represented himself in great need of money, and begged of your orator a small loan; that your *your* orator at that time loaned said Henry one hundred and thirty-nine dollars, taking the note of said Henry, payable to Jasen Clapp & Son, at their office, on demand, for said sum, with interest,
1013 and also a verbal agreement from said Henry that your orator should retain said deeds as security for the payment of that sum also.

Your orator further shows unto your — that no part of said sum has been paid, and that there is now due on account thereof the sum of one hundred and seventy-two dollars. Your orator also shows that no part of said sum so loaned by said Ebenezer to said Henry has been paid, except the sum of thirty dollars October 30th, A. D. 1863, and the further sum of twenty dollars October 30th, A. D. 1864, and that there is now due on account of said loan the sum of six thousand two hundred and seventy-six dollars.

Your orator further shows that the money advanced by him from time to time in payment of necessary repairs on said lands so held by him in trust as aforesaid and of taxes accrued thereon during the time he has so held the same in trust amount, over and above all rents and profits received by your orator, to the sum of one hundred dollars, as nearly as your orator can now state the same.

Your orator further showeth unto your honor that said
1014 Jasen Clapp, to accommodate his nephews, the said Henry and the said Ruggles, and his brother, the said Ebenezer, simply allowed the use of his name in said trust, but never otherwise participated — the said trust, and that all the active duties thereof devolved on and were *pre*formed by, so far as *pre*formed at all, your orator.

Your orator further showeth unto your honor that afterward the said Henry and the said Ruggles attempted a scheme to deprive

your orator and said Ebenezer of all interest in said lands. In pursuance of said plan said Ruggles, on or about the tenth day of January, A. D. 1868, signed and acknowledged a blank form for the conveyance of lands and delivered the same to said Henry; that in said form, when received by said Henry, was no description of any lands whatever, nor did said form contain the name of any grantee; that after said Henry received said form he or some person by his procurement and without the consent of said Ruggles inserted therein the name of said Henry as grantee and the description
1015 of the same lands contained in said deed from said Jasen to said Ruggles and in the deed from your orator to said Ruggles as aforesaid, and on the 30th day of said month of January left said deed thus filled up for record and procured the same to be recorded by the recorder of said Lee county, in Book Seventeen of Deeds, at page fifty-one.

Your orator further showeth that in further pursuance of said plan said Henry, on or about the first day of February, A. D. 1868, called on said Cephas and asked his permission to take said deeds from said Jasen to said Ruggles and from your orator to said Ruggles, pretending at the same time a desire to copy them and saying to said Cephas that he wished said copies to enable him to make out a conveyance of all said lands to your orator so that their might be no question in reference to your orator's title thereto; that said Cephas refused said request, but informed said Henry that he could copy said deeds at the house of said Cephas, but under no circumstance would he be allowed to take them away; that said Henry
1016 thereupon left, soon returning with a justice of the peace, and again asked for said deeds for the purpose of copying them. Said Cephas thereupon handed said deeds to said Henry and said justice for the purpose of copying, but with the injunction that they should not be taken away. Said Cephas was called out of the house, and on his return discovered that during his absence said Henry and said justice had left, said Henry taking both said deeds with him. Said Cephas then hastened to the residence of Lot Chadwick, but a few rods distant, and where said Henry spent much of his time, for the purpose of retaking said deeds from said Henry; that he was there informed by some member of said Chadwick's family that said Henry had gone to his home, which was then on said lands, but the fact was that said Henry had hastened to his attorneys, taking said deeds with him. Said Cephas afterwards demanded of said Henry a return of said deeds, but said Henry has never yet returned either of them and refused so to do.

Your orator further showeth unto your honor that in the
1017 further prosecution of said plan said Henry Clapp and his wife, the daughter of said Lot Chadwick, on the first day of March, A. D. 1869, executed to said Lot Chadwick a pretended conveyance of said land described in said deed from said Jasen to said Ruggles and in said deed from your orator to said Ruggles for the pretended consideration of ten thousand dollars; which said pretended conveyance was, on the third day of March, A. D. 1869, filed for record by the recorder of said Lee county and recorded in Book

Number Fourteen of Deeds, at page 547, in the office of said recorder; that since the execution of said pretended conveyance to said Lot Chadwick he and the said Henry have assumed the control of said premises and have received the rents and profits thereof, to the entire exclusion of your orator and his agent, the said Cephas.

Your orator further showeth unto your honor that to consummate said plan said Lot Chadwick, on the fourteenth day of September, A. D. 1869, filed in this honorable court his bill in chan-
1018 cery, making your orator and his wife, Mary M. Clapp, defendants therein; that said bill, among other things, states said conveyance from said Jasen to said Ruggles; the conveyance from your orator to said Ruggles; states said form of conveyance so as aforesaid signed and acknowledged by said Ruggles and delivered to said Henry and by said Henry filled up by inserting his name as grantee and by inserting a description of said lands therein as a conveyance of said premises by said Ruggles to said Henry; states said pretended conveyance by said Henry and his daughter, Sarah A., wife of said Henry, to him, and claims that he thereby received the title to the premises therein described; states that ever since the date of said last-named deed he has been in the possession of all the said lands; that he, said Chadwick, is the sole legal owner thereof. He further avers and charges in said bill that said Henry had been the equitable owner of all said lands from the time the United States parted with its title thereto until the date of said pretended conveyance to him.

1019 Said Chadwick in and by said bill, upon information and belief, further avers and charges that said deed made by your orator and his wife to said Ruggles had been by said Ruggles filed for record in the said recorder's office; that before it had been recorded it was by some person or persons unknown taken from said office and was afterward by some person mutilated and defaced by drawing certain ink lines across and over the signatures of your orator's wife. Said Chadwick in and by his said bill prayed an answer from your orator and said Mary, but waived their oaths thereto; prayed the court to decree that all the title of your orator in and to the lands described in your orator's said deed to said Ruggles be held to have passed to said Ruggles and vested in him on the twenty-eighth day of November, A. D. 1855; that said deed from your orator to said Ruggles be admitted to record with the same effect as if the signatures thereto had not been defaced; that the master in chancery be ordered to execute and deliver on
1020 behalf of your orator and the said Mary a deed conveying to said Chadwick all the right, title, and interest which your orator and said Mary had in and to said lands on said twenty-eighth day of November, A. D. 1855, and for such further and other relief as he might be entitled to.

Your orator further showeth unto your honor that on the ninth day of February, A. D. 1870, he filed his answer, good and sufficient, to said bill so filed by said Chadwick.

Your orator further showeth unto your honor that the pretence of said Chadwick that he is the owner of said lands is untrue; but your

orator avers and charges the fact to be that said Chadwick accepted said conveyance from his said son-in-law, the said Henry, and from his said daughter, the said Sarah A., solely for the purpose of enabling the said Henry to defraud the said Ebenezer Clapp and your orator of the monies said Henry justly owed them; that for at least thirteen years immediately preceding the date of said pretended conveyance to said Chadwick he had resided within three miles of said
1021 lands, and had for the same period resided with- ninety rods of the residence of said Cephas Clapp, the agent of your orator as aforesaid; that the interest of your orator and of said Ebenezer Clapp in and to said lands by reason of the said Cephas having the general supervision thereof, leasing the same, making repairs, paying the taxes assessed, as the agent of your orator, and for other reasons was notorious, well known, and understood in the immediate neighborhood of the residence of said Chadwick at and long prior to the date of said pretended conveyance to said Chadwick, and could but have been known and was known by said Chadwick at the time he accepted said pretended conveyance; that the fact that said Cephas had possession of said deeds as the agent of your orator, and that said Henry obtained their possession by the use of falsehood and deception, as hereinbefore stated, was all well known to said Chadwick before he accepted said conveyance.

Your orator further showeth unto your honor that he does not
1022 know whether said deed from your orator to said Ruggles was ever filed for record nor whether it was ever defaced by drawing ink lines over the names of your orator and his said wife, Mary, as charged and stated in his said bill of complaint filed by said Chadwick, as before stated, but your orator avers that there is no record of said deed in said recorder's office, and insists that had said Henry at the date of said pretended conveyance to the said Chadwick been in possession of said deed and the said Chadwick ignorant of the means used by him to obtain it, yet if, as stated by said Chadwick in his said bill, said deed had been defaced by drawing ink lines over the names of the grantors therein, such defacement was sufficient notice to said Chadwick that your orator had not intended to part with, and had not actually parted with, his legal title to the lands described therein, and that said Chadwick should, before accepting said conveyance from said Henry, have inquired of your orator concerning the matter.

Your orator further showeth unto your honor that he has been
1023 informed, verily believes, and so charges the fact to be that said Chadwick did not *not* pay to said Henry, nor has he paid to any person for said Henry, the consideration specified in said pretended conveyance from said Henry to said Chadwick, nor any considerable portion thereof; that since the date thereof the said Henry has resided on the lands therein described, has exercised authority and control over the premises and over the tenants occupying the same, and has received at least a considerable portion of the rents and profits of said lands since the date of said Chadwick's pretended purchase; that said Chadwick is at least seventy-eight years of age, quite infirm, and leaves to said Henry the management

of said lands, and your orator charges that the said Henry Clapp is as much as ever the equitable owner of said lands; and your orator submits to your honor that the facts hereinbefore stated show that your orator has a lien, in the nature of an equitable mortgage, on all the land described in said conveyance from
1024 said Jasen to said Ruggles and in said conveyance from your orator to said Ruggles for the payment of the amount now due on said loan by said Henry of said Ebenezer; also for the amount now due on said loan by said Henry of your orator; likewise for the moneys, with interest thereon, advanced from time to time by your orator in payment of the taxes assessed on said lands and of necessary improvements made thereon; and your orator had well hoped that neither the said Henry Clapp nor the said Lot Chadwick would have denied the aforesaid just and equitable claims of your orator, nor attempted to defeat the enforcement of the same, but now so it is, may it please your honor, the said Henry Clapp and the said Lot Chadwick have combined and confederated together for the purpose of defeating the collection of said claims of your orator, and to that end the said Henry fraudulently took said deeds from the residence of said Cephas, as before stated, made the said pretended and fraudulent conveyance *conveyance* to the said Lot Chadwick, as before stated, and the said Chadwick filed said
1025 bill, in it setting up the pretence that he is the owner of said lands and a variety of other pretences, as hereinbefore stated; all of which said pretences are false and unfounded, and which said bill is still pending in this court.

In tender consideration whereof, and inasmuch as your orator has no adequate remedy at law and cannot have complete justice without the aid of a court of equity, to the end, therefore, that justice may be done, your orator prays that the said Ebenezer Clapp, the said Henry Clapp, the said Lot Chadwick, may be made parties defendant herein; that a summons issue out of and under seal of this honorable court, directed to said Ebenezer Clapp & the said Henry Clapp, commanding them and each of them, under a certain penalty therein to be specified, personally to be and appear before this honorable court at the next term thereof, then and there to answer all and singular the matters and things herein charged, but the oath to the answer of each and every of said defendants is hereby expressly waived; that the said Lot Chadwick be required to answer this the cross-bill of your
1026 orator, agreeably to the statute in such case made and provided, but not on oath, the oath of said Chadwick to his said answer being hereby expressly waived, and that each and every of said defendants be required to perform and abide by such order and decree herein as to your honor shall seem agreeable to equity and good conscience.

And your orator further prays that he may be decreed to have a lien in the nature of an equitable mortgage on all said lands so as aforesaid conveyed by said Jasen Clapp to said Ruggles Woodbridge Clapp; also on all said lands so as aforesaid conveyed by your orator to said Ruggles Woodbridge Clapp to the amount of said indebted-

ness from said Henry to said Ebenezer Clapp, and of said indebtedness from said Henry Clapp to your orator, and of said money so as aforesaid disbursed by your orator in payment of the taxes assessed on said premises and of repairs and improvements put on said premises; that said Henry Clapp or said Lot Chadwick or both of them be decreed to pay said sums within a reasonable time
1027 from the date of said decree, and that in default thereof the said lands or so much and such parts thereof as may be necessary for that purpose be sold to satisfy that amount and all costs attending this suit by the master in chancery of this court, according to the law and the practice of this court; that it be further provided that at such sale either of the parties to this suit may be a bidder; that in default of redemption, in accordance with the statute in such case made and provided, the purchase- or purchasers at said sale or his or their assign or assigns shall be entitled to a deed from said master, and that each and every of said defendants and every person claiming by, from, through, or under them or either of them be forever barred and foreclosed from asserting any right, title, interest, or claim in and to any portion of said premises so sold; that it be further decreed that the record of said conveyance from said Jasen Clapp to the said Ruggles Woodbridge Clapp, said pretended conveyance from said Ruggles Woodbridge to the said Henry Clapp and the record thereof, the said pretended
1028 conveyance from the said Henry to the said Lot Chadwick and the record thereof, be declared null and void and henceforth to be for naught held; that it be further decreed that said Lot Chadwick surrender to your orator said deed from said Jasen to said Ruggles Woodbridge Clapp and said deed from your orator to said Ruggles Woodbridge Clapp; said Lot Chadwick be decreed to pay the costs of this suit, and that your orator may have such further, other, or different relief as to your honor shall seem meet; and, — in duty bound, your orator will ever pray.

EDWIN CLAPP.

B. H. TRUSDELL,
Sol. & Counsel for Compl't.

Endorsed, to wit: Filed November 9th, A. D. 1870. J. N. Hyde, clerk.

1029 *Answer of Lot Chadwick to Cross-Bill.*

STATE OF ILLINOIS, } ss :
County of Lee, }

In the Circuit Court of Lee County. In Vacation of December Term, A. D. 1870.

LOT CHADWICK
vs.
EDWIN CLAPP *et al.* } In Chancery.

The answer of Lot Chadwick to the cross-bill filed herein by Edwin Clapp.

This respondent, now and at all times saving and reserving to herself all and all manner of exceptions to the manifold errors and uncertainties in the said cross-bill contained, for answer therein or unto so much thereof as he is advised it is material and necessary for him to make answer to, answering, says—

That he admits it to be true that the said Edwin is the son of one Jason Clapp, who for many years lived in the State of Massachusetts and who is now dead, but whether the date of his death
1030 is correctly stated in said cross-bill this defendant is not advised.

That he admits that one Ebenezer Clapp, who lived at Lee Centre, in said Lee county, about the year A. D. 1856 and for several years last prior thereto, and who is now, as respondent believes, a resident of Massachusetts, was a brother of said Jason and is the father of the said Henry Clapp and of the said Ruggles W. Clapp named in said cross-bill, and that the wife of the said Henry is the daughter of this respondent.

And as to the statement in said bill as to certain conveyances said to have been made by John F. Clapp to Jason Clapp and Edwin Clapp and by Lewis Clapp to Edwin Clapp on October 14th, 1853, and October 29th, 1853, this respondent saith that he believes said statements to be true, but that he hath no further knowledge or information on the subject save what is derived from the said bill and from the records in the recorder's office in said county; and as
1031 to all the statements in said bill in reference to the purposes for which it is alleged that said conveyances were made, and as to any trusts thereby said to have been intended to be created, and as to any alleged advances of any money to said Henry Clapp made by the said Jason and Edwin or by either of them, and as to whether said advances were repaid, as stated in said bill, this respondent saith that he has no knowledge, but that he had been informed and believes that said lands were always, up to the time that this respondent purchased them as hereinafter stated, equitably the property of said Henry Clapp, and that this respondent had been informed and believed and still believes that the said Henry, at the time the said Jason and Edwin took said conveyances, was finan-

cially involved, and that they, the said Jason and Edwin, took and held said lands in trust for the said Henry, and that they, the said lands, were to be conveyed to the said Henry upon his
1032 request or to such person or persons as he might designate; and as to the statements in said bill to the effect that on or about the 28th day of November, A. D. 1855, the said Henry refunded the said advances, and that thereupon, at the request of the said Henry, the said Jason conveyed to the said Ruggles Woodbridge Clapp all the said lands which had been so held by the said Jason, and that all said lands were described in and were conveyed by one deed, and that on or about said date the said Edwin, at the request of said Henry, conveyed to said Ruggles all the said lands which had been so held by the said Edwin, this respondent, answering, saith that he believes it to be true that said conveyances were so made, and at the request of the said Henry.

And as to the statement in said bill to the effect that the said Henry was the equitable owner of said lands, and that Ruggles Woodbridge Clapp took the said title in trust for the said
1033 Henry, this respondent saith that, as he has been informed and believes, the said statements are true, and saith that, as he is informed and believes, the said conveyances were made for the purpose of enabling the said Ruggles to execute a mortgage upon them to one — McLean, of the city of New York, to secure to him the payment of a certain debt for about seven thousand dollars, about to be contracted for goods to be bought of him, for the benefit of said Henry, in the name of the said Ruggles, and that the said Jason and Edwin, at the time they made said conveyances, well knew that they were made for that purpose, and that said stock of goods was purchased and a store opened in Amboy, in said Lee county, for the sale of them in the name of the said Ruggles, but really for the benefit of the said Henry.

And as to all the statements in said bill contained as to the said Henry on July 18, 1856, applying to his father, the said Ebenezer, for a loan of $2,600, and offering said lands as security for the re-
1034 payment thereof, and as to the said loan being made, and as to any alleged arrangement that the said Jason and the said Edwin should receive the securities for such loan, and that a note should be made by said Henry, and that said Ruggles should deposit with the said Jason and Edwin the two said deeds so made by the said Jason and the said Edwin for the said Jason and Edwin to hold as a security for said loan, and that said arrangements were carried into effect, and as to all the statements in reference thereto, this defendant saith that he is not informed, and he therefore denies each and all of the same, and puts the said complainant upon strict proof thereof.

And as to whether said deeds were ever delivered by the said Ruggles to the said Jason and Edwin, and as to what the said Ruggles said or the said Edwin believed, this respondent has no knowledge or information, and therefore denies all of the same; but this respondent saith that the said deed from the said
1035 Edwin Clapp to the said Ruggles W. Clapp was filed for

record in the recorder's office, in the said county of Lee, on the fifth day of December, A. D. 1855, and the fees for recording the same were then and there paid to the said recorder, and the said recorder then and there wrote and endorsed upon said deed the following words, to wit:

"STATE OF ILLINOIS, }
"*Lee County.* }

"This instrument was filed for record Dec. 5, A. D. 1855, and recorded in Book — of Deeds, page —.
"Due R. W. Clapp 50c.
"P'd & rec't given."

And the said deed from the said Jason Clapp to the said Ruggles W. Clapp was also filed for record in said office on said day, and the fee for recording the same was then and there paid to the said recorder, and the said recorder then and there wrote and endorsed upon said deed the following words, to wit:

1036 "STATE OF ILLINOIS, }
"*Lee County.* }

"This instrument was filed for record Dec. 5, A. D. 1855, and recorded in Book M of Deeds, page- 525 & 526.
"P'd & rec't given."

And respondent avers that said deed was so recorded in Book M of Deeds, and that the said certificates were endorsed upon said deeds at or about said fifth day of December, A. D. 1855, and were so upon said deeds at the time that the said complainant in his said cross-bill says they were returned to him by the said Ruggles, and the said certificates were then and there notice to him, the said complainant, of everything contained therein.

And respondent saith that if it be true, as said Edwin states in said cross-bill, that he had no actual knowledge until the 10th day of December, A. D. 1860, that said deeds or either of them had been recorded, that his ignorance of said facts was the result of his own carelessness and negligence and of his
1037 failure even to read said certificates. And as to the statements in said cross-bill contained to the effect that said complainant, Edwin, had on or about November 9th, 1860, appointed one Cephas Clapp, a resident of Lee Centre, in said Lee county, his agent in reference to said lands, and that he acted in that capacity until about the time that this respondent bought them of the said Henry, this respondent saith that he knows nothing about any such employment or agency or about any actions of said Cephas further than that he had been informed that for awhile the said Cephas seemed to have some concern with the affairs of said farm, but that, as respondent always believed, the connections therewith of the said Cephas was at the instance of the said Henry and for the purpose of carrying out the designs here-

inbefore referred to and to which, as this respondent has been informed and believes, the said Edwin was a party, namely, to prevent the said lands or the products thereof from being taken by the
1038 said Henry's creditors against his consent; but this respondent avers that during the whole year before the date of this respondent's purchase of said property the said Cephas had, as respondent verily believed then and now believes and so avers the truth to be, ceased to have any apparent interest in or connection with said property, but, on the contrary, during all said time the said Henry lived thereon, as he had indeed done for many years prior thereto and from the date of said original conveyances to the said Jason and Edwin, and seemed to be and was in the exclusive management and control thereof; and this respondent had no reason to know or to believe and did not know or believe at the time of his said purchase that the said Cephas either had or pretended or claimed to have any interest in or connexion with said property in any way, shape, or manner whatever.

And as to the statement in said cross-bill to the effect that said Edwin, about April 1, 1864, sent to said Cephas the said two deeds so as aforesaid made by said Jason and said Edwin, "that the
1039 said Cephas might be better able to protect" said Edwin's interest, this respondent saith that he hath no knowledge or informaion, and he therefore denies the same, but he saith that he is unable to perceive in what way the possession by said Cephas of deeds conveying away the title of the said Edwin and the said Jason would make him better able to protect their interests.

And as to all the statements in said bill in reference to an alleged loan by the said Edwin to the said Henry on Nov. 3, 1866, of one hundred and thirty-nine dollars, this respondent saith that he is not informed and therefore denies all of the same.

And as to whether, if the said Ebenezer ever loaned any money to said Henry, there remains due thereon $6,276 or any other sum this defendant is not informed, and he therefore denies all of the same; but this respondent saith that he is informed and believes and so avers the fact to be that the said Ebenezer has relinquished and released all claims whatever that may have been at any time due and owing to him from the said Henry, and that the at-
1040 tempt made in this case to enforce any alleged rights on behalf of the said Ebenezer is made without the knowledge or consent of the said Ebenezer.

And as to the statement that there is due to said Edwin the sum of one hundred dollars for "necessary repairs on said lands" and for taxes thereon paid by him, this respondent saith that he has no knowledge or information save as is stated in said bill, and he therefore denies that the same is true.

And as to the statements that said Jason never took any active part in the matters stated and referred to in said cross-bill, this respondent does not know, but he believes that the same may be true.

And as to the statements in said cross-bill in reference to the making of a deed by the said Ruggles W. Clapp to the said Henry Clapp, on or about the 10th day of January, 1868, and that said

deed when acknowledged had no grantee's name therein nor any description of property recited therein, and that said blanks were filled after delivery, and all the statements connected therewith,
1041 this respondent saith that he denies each and all of the same, and he saith that he has in his possession, as a part of his chain of title to said lands, a deed therefor made by the said Ruggles to the said Henry, and which came within his possession after the same had been recorded and after your respondent had purchased said lands; that said deed is regular and sufficient upon its face and shows no signs of any such alterations or filling up, and that if any change was made in said deed after its delivery it was made without the knowledge of this respondent and before he purchased said lands; and respondent admits that said deed was recorded in the recorder's office in said county of Lee, on January 30, 1868, in Book 17, at page 51.

And as to all the statements in said cross-bill contained as to the manner in which it is therein alleged that the said Henry obtained possession of said two deeds from the said Cephas or as to whether he ever obtained them from the said Cephas this respondent saith that he is not informed, and he therefore denies all of the same; but as to
1042 that portion of said statements in which it is averred that the said Cephas came to the residence of this respondent in search of said Henry and of said deeds this respondent denies that the said Cephas ever came to him on said errand, and as to whether he ever saw any other person at respondent's house in reference thereto this respondent has no knowledge, but on information he denies the same; but he saith that if any such things occurred they were matters which at the time in no way concerned him, and to which, if they happened, he paid no attention; that when he bought said lands he had never seen said deeds and knew nothing as to how or under what circumstances they had come into said Henry's possession or whether he had the possession of them at all.

And as to the statements in said cross-bill contained in reference to the purchase of said lands by this respondent of and from the said Henry, this respondent saith that it is true that the said Henry and his wife did, on the first day of March, A. D. 1869, execute
1043 and deliver to your respondent a deed conveying to him all said premises for the consideration of ten thousand dollars, as expressed in said deed, and that said conveyance was on the 3d day of March, 1869, filed for record in the recorder's office in said county of Lee, and was duly recorded in Book Number 14 of Deeds, at page 547; but this respondent denies that the same — "a pretended" conveyance or that it was made for a "pretended" consideration, and averes that the said conveyance was made in good faith, and that he paid for said premises the full sum of ten thousand dollars, as stated in said bill and as hereinafter more particularly set forth.

And as to the statement that since the execution of said conveyance this respondent and the said Henry have assumed the control of said premises and have received the rents and profits thereof to the exclusion of the said Edwin and of the said Cephas, this re-

spondent denies all of the same, but saith that since the execution of said conveyance this respondent has assumed the control of said premises and has received the rents and profits thereof to the
1044 exclusion of everybody, and that until the filing of said cross-bill respondent had no knowledge or information that the said Edwin claimed any right thereto, and as to the said Cephas he has never pretended to have any, so far as respondent knows.

And this respondent admits that he did file his bill in chancery, as in the said cross-bill stated, in this honorable court, praying therein as in said cross-bill recited, and that said complainant, Edwin, was made one of the defendants in said bill and filed his answer thereto, and that said cross-bill is filed in said case.

And as to the statements in said cross-bill to the effect that said conveyance by the said Henry to this respondent was made for the purpose of enabling the said Henry to defraud the said Ebenezer and the said Edwin, this respondent denies the same.

He denies that he had lived for the last thirteen years within three miles of said land, but admits that for that period he had
1045 lived within about four miles, by ordinarily travelled roads, from the same; but he saith that he never was on or saw said lands until about the time of his said purchase.

He admits that for a long period he had lived within about ninety rods of the residence of said Cephas Clapp, but he denies that he knew of any interest being claimed by said Ebenezer or said Edwin in said lands by reason of the said Cephas having anything to do therewith, and he denies that by reason of anything done by the said Cephas it was notorious in the neighborhood or known by respondent that said Cephas in any way represented said Ebenezer or said complainant, so far as their claiming any interest in said lands was concerned.

And he denies the statement in said bill to the effect that the alleged fact that said Cephas ever had possession of said deed, or that said Henry obtained possession thereof in the manner specified in said cross-bill at the time he purchased said lands and received the said conveyance from the said Henry.

And he denies that at the time he made said purchase and
1046 received said conveyance he had any knowledge or information as to any defacement and mutilation of the two said deeds or of either of them, but he saith and will prove, as this honorable court may direct, that when negotiating for the purchase of said lands he was shown a certain certificate of title made and dated on December 5th, A. D. 1855, signed by Isaac S. Boardman, who was at the date of said certificate recorder of deeds in and for said county; by George Hudson, who was then and there deputy of the said Boardman, which certificate recited that on that day there were filed in said office "two deeds from Jason Clapp and Edwin Clapp respectively to Ruggles W. Clapp," conveying the said lands, "and that the said lands were, as appears from the records of deeds and mortgages in my office, free from incumbrance;" and it was then stated to this respondent that the two said deeds were in the office of the attorney of said Henry Clapp, at Dixon, in said Lee

county, and respondent was further shown the said deed from the said Ruggles W. Clapp to the said Henry; and respondent
1047 well knew that the said Henry had been for many years in the actual possession of said lands, and, as respondent supposed and believed, since the date of the said deed from Ruggles he, the said Henry, was so in possession claiming to be the owner thereof, and respondent then and there further knew that there were then in existence judgments on which executions had been issued and said lands levied on; that one of said judgments was in a case where said lands had been attached as the property of the said Ruggles prior to the time of the filing of the said deed from Ruggles to Henry for record and others were against the said Henry; and respondent knew that as a part of the purchase-money he was to pay off said judgments, as hereinafter set forth.

For all these reasons this respondent then and there believed the said Henry to be the legal and equitable owner of said lands at the time of said purchase.

And as to the statement in said cross-bill to the effect that this respondent did not pay the consideration specified in said deed nor any considerable portion thereof, this respondent denies all of the same, and saith that he did pay the sum of ten thousand
1048 dollars for said land, being the full consideration named in said deed; and he further saith that he paid the same in the manner following, to wit:

1869.		
Mar. 1.	He paid cash in hand (bonds)	$2,150 00
" "	for stamps and making deed	11 00
" "	execution, E. L. Clapp *vs.* R. W. Clapp	760 80
" "	two judgments, Emerson *vs.* Henry Clapp	244 28
	Carried forward	$3,166 08
	Amount bro't forward	3,166 08
	He paid execution, H. Chase *vs.* Henry Clapp	125 12
		$3,291 20

He also, at the time, surrendered to said Henry Clapp certain notes which this respondent then held against him, and all of which were justly due and payable, as follows:

One note of date Oct. 15th, 1866	$1,500 00
Interest on the same, then due	375 25
One note dated March 1, 1867	40 00
Interest on the same	8 00
One note dated Dec. 20, 1867	3,156 00
Interest on the same	375 21
One note dated June 1, 1868	304 00
Interest on the same	22 80

One note dated Jan'y 1, 1869	$250 00	
Interest on the same	4 17	
Total notes & interest		$6,035 43
In all, as above		9,326 63

1049 He paid at request of said Henry taxes on said lands as follows:

Part of back taxes for 1867 & 1868, paid to J. T. Little, Co. treasurer	$170 50	
For redemption from tax sale	200 00	
		370 50
		$9,697 13
And as to the balance, namely		302 87

he agreed with said Henry to pay certain other debts and to pay his orders, and he saith that said balance was so by him paid in full.

And so he saith that he has fully paid the said sum of ten thousand — as the consideration money for the purchase of the said lands.

And he further saith that the said sum of $2,150, paid down at the time of said purchase and called cash, was paid in negotiable bonds issued by Lee county and other corporations, and then of the actual cash value.

And he further saith that at the time of said purchase he held all of the notes as specified, as aforesaid, made by the said Henry Clapp, and at the same time all said lands had been levied upon by the sheriff of said county by virtue of the said judgment in the case of Ebenezer Lee Clapp against Ruggles W. Clapp and were then
1050 advertised by said sheriff for sale, and the other judgments above referred to were liens upon said property as the property of the said Henry, and the plaintiffs in all of them were pressing for their pay.

And the said Henry was not able otherwise than by the sale of said lands to satisfy them and had no other means of paying this respondent.

Respondent therefore was obliged to make *make* said purchase or to lose his debt; and he saith that said purchase was made by him for that purpose and in good faith, and that he then believed that said Henry was legally and equitably the owner of said lands, and he, this respondent, had no knowledge or information or reason to suppose that the said Edwin Clapp either had or pretended to have any interest therein whatever.

And as to the statement of said cross-bill to the effect that since the date of the said sale the said Henry has resided on said lands and exercised control over the same and over the tenants, and has received a portion of the rents, and that this respondent is at least

seventy-eight years of age and very infirm and leaves the
1051 management of said lands to said Henry, and that said Henry
is now as much as ever the equitable owner thereof, this respondent, answering, saith that it is true that the said Henry has resided on said lands, but that it is not true that he has exercised any control over the same or over the tenants, save while acting for your respondent as hereinafter stated; that it is true that this respondent is advanced in years and is incapaci-ated for the personal charge or supervision of all said lands in connection with the management of his other affairs, and he saith that the said Henry is the husband of this respondent's daughter; that the said Henry and his wife have no other home; that the said Henry's habits and mode of life have been at times reckless and improvident, and that for the purpose of furnishing a home for respondent's daughter and her said husband this respondent permitted them to continue to live on said land, and the said Henry has to a certain extent had the supervision of some of the affairs connected therewith, but simply for the purpose of looking after your respondent's interest in the crops raised
by the various tenants on said lands; but this respondent
1052 denies that the said Henry has any right, title, or interest in said land, either legal or equitable.

And this respondent, further answering, denies that the said Edwin Clapp has or is entitled to have any equitable interest in said lands or in any part thereof.

And this respondent saith that the said complainant in his said cross-bill hath not shown himself entitled to the relief therein prayed for, and prays that respondent may have the same benefit of exception as if he had specially demurred thereto.

And respondent — all and all manner of unlawful confederacy wherewith he is in the said cross-bill charged; without this, that any other matter or thing in the said cross-bill stated or charged and not herein and hereby well and sufficiently denied or traversed or confessed and avoided is true to the best of his knowledge, information, or belief; and, having fully answered, this respondent, as to the said cross-bill, prays to be hence discharged with his reasonable costs by him in this behalf most wrongfully sustained.

LOT CHADWICK.

1053 EUSTACE, BARGE & DIXON,
Sol's and Counsel for Def'd't Chadwick.

Endorsed: Filed February 27th, A. D. 1870. J. N. Hyde, clerk.

1054 Copy.

STATE OF ILLINOIS, } ss:
County of Lee, }

In the Circuit Court of Lee County. In Vacation after December Term, A. D. 1870. In Chancery.

LOT CHADWICK }
vs.
EDWIN CLAPP *et al.* }

The answer of Henry Clapp to the cross-bill filed herein by Edwin Clapp.

This respondent, now and at all times saving and reserving to himself all and all manner of exceptions to the manifold errors and uncertainties in the said cross-bill contained, for answer thereunto, or unto so much thereof as he is advised it is material and necessary for him to make answer to, answering, says—

That he admits it to be true that the said Edwin is the son of Jason Clapp, who for many years lived in the State of Massachusetts and who is now dead, but whether the date of his death is correctly stated in said cross-bill this defendant is not advised.

1055 That he admits that one Ebenezer Clapp, who lived at Lee Centre, in said Lee county, about the year A. D. 1856, and for several years last prior thereto, and who is now, as respondent believes, a resident of Massachusetts, was a brother of said Jason, and is the father of this respondent and of the said Ruggles W. Clapp named in said cross-bill, and that the wife of the said respondent is the daughter of the said Lot Chadwick.

And this respondent admits that one John F. Clapp did convey to said Jason Clapp and to the said Edwin Clapp certain lands as specified in said cross-bill, and that one Lewis Clapp conveyed to said Edwin certain other lands, all as stated in said cross-bill, and that he believes that said deeds were made and recorded at the dates specified in said cross-bill

And as to the statements in said cross-bill that the said Jason and the said Edwin took the title to the said lands in trust, as in said cross-bill stated, to secure certain advances of money made by them to this respondent, and that afterwards, said monies having been

1056 by him repaid, the said Jason and the said Edwin did, at the request of this respondent, each execute a deed whereby, by the two deeds so by them executed, one by each, they conveyed said lands to one Ruggles Woodbridge Clapp, this respondent admits all said statements to be true.

And this respondent, further answering, admits that the said Ruggles W. Clapp at no time had any beneficial interest in said lands or in any part thereof, but that he took the title to said lands, as before stated, as a naked trustee for this respondent.

And as to the statement in said cross-bill in reference to an alleged loan of money by the said Ebenezer to this respondent in July, A. D. 1856, and as to all the statements connected therewith, this

respondent, answering, says that he denies that said statements as made in said bill are true, and in reference to the same he says that the only reason why the title to said lands in said cross-bill named was ever vested in the said Jason Clapp and Edwin Clapp was that *he*
had loaned to this respondent a certain sum of money to be
1057 used by him in payment for part of said lands, and that in
the year A. D. 1855 respondent had a settlement with them at that time, — which settlement they claimed that he owed them on account of said advance the sum of six hundred and fifty dollars, which sum this respondent then paid to them, and thereupon, at the request of this respondent, they, the said Edwin and Jason, executed and delivered deeds conveying the legal title of all said lands to one Ruggles W. Clapp, as stated by said Edwin in his cross-bill herein.

And respondent saith that immediately after the said Ruggles had received the said deeds he, the said Ruggles, executed to one E. W. McLean a mortgage conveying all said premises, which said mortgages were made for the purpose of securing to the said McLean the payment of the sum of seven thousand dollars, the said debt being made by the purchase from said McLean of a stock of goods to that amount, which said goods so purchased were, when purchased,
the property of and bought for this respondent, though the pur-
1058 chase thereof was made in the name of the said Ruggles.

That as said goods were sold the avails thereof were forwarded to the said Ruggles for the purpose of making payment of the said mortgage debt.

And respondent avers that all the matters as hereinabove stated were, at the time of the happening thereof, well known to the said Edwin Clapp.

And respondent further avers after money enough had been realized from said goods and had been received by the said Ruggles with which to discharge the said mortgage debt this respondent demanded of the said Ruggles that he should pay the said mortgage debt and should procure a release of the said mortgage and should then convey the said property to this respondent, and thereupon the said Ruggles stated to this respondent that the deeds so as aforesaid made to him by the said Edwin and Jason had not, as to their execution, been properly acknowledged, and that he, the said Ruggles, had returned the said deeds to the said Edwin and Jason, and said
to this respondent that they, the said Edwin and Jason, then
1059 held the same.

And respondent avers that the said mortgage debt to the said McLean has been fully paid and the notes given therefor surrendered.

And respondent avers that it was not until at least six months after the making of said statement that this respondent received from his father the sum of twenty-six hundred dollars referred to in said cross-bill; and this respondent denies that there was either then or at any other time any deposit made of said deeds as a security for said loan, or that it was ever proposed that they or either of them should be held as a security therefor, nor did the said respondent's father,

the said Ebenezer, ever demand, suggest, or require that said deeds or either of them should be so held.

And respondent denies that the said Edwin or the said Jason ever did hold said deeds as a security for said loan, and he denies that said deeds or either of them were ever placed in the hands of the said Edwin at or after the time of making said loan.

And respondent avers that his father never called upon
1060 him for a repayment of said money nor any part thereof, nor, as respondent verily believes, did his father ever intend to demand payment of the same; and respondent saith that more than ten years after the making of said loan, to wit, in November, A. D. 1866, this respondent, in company with his father, visited the said Jason Clapp and Edwin Clapp at Pittsfield, Massachusetts, and that this respondent then and there told his father in their presence that he wished to repay said money; that the conversation that then took place between them all was in substance as follows: Edwin replied to respondent that respondent's father did not need the money and would not take it from respondent; that respondent's father, the said Ebenezer, then had a large amount of funds in their possession at interest, and that he did not even use the interest of his money, and it was then suggested in the presence of all that it would be well that the said Ebenezer should make and execute a will, which he, the said Ebenezer, then said he would do, and shortly thereafter the said Ebenezer went to Amherst, Massa-
1061 chusetts, where his counsel, the Hon. Mr. Dickenson, then a Senator in Congress from said State of Massachusetts, drew a will for the said Ebenezer, which will the said Ebenezer then and there executed, and in and by which he bequeathed to this respondent the said indebtedness as his share in the said Ebenezer's estate.

And this respondent avers that he has no reason to believe and does not believe that any other will has since been executed by the said Ebenezer, but he says that the said Ebenezer is well advanced in years, and since the time of the making of said will has been greatly incapacitated for the management of any of his business affairs and, as affiant is informed and believes, does not attempt any personal management thereof, by reason whereof and of other matters hereinbefore and hereinafter stated this respondent believes and avers that the said Edwin in his defense in this cause and in prosecuting his cross-bill herein, all of which he professes to have done for the benefit of the said Ebenezer, is in fact acting without his knowledge or consent.

1062 And as to the statements in said cross-bill in reference to certain statements alleged therein to have been made by the said Ruggles to the said Edwin at the time when the said Ruggles returned to the said Edwin the said deeds, this respondent saith that he is not informed and therefore denies the same, but he saith that at the time of said return *of* the said deeds showed by the endorsements thereon that they had each been filed for record in the recorder's office of said county of Lee, and also showed by said endorsements that one of them had in fact been recorded in said office, all of which the said Edwin could well have seen by looking at said deeds.

And as to the statements in said cross-bill that the said Edwin did not, until about the 10th day of December, A. D. 1860, have any knowledge that the said deeds or either of them had been recorded, this respondent denies the same.

And as to the statements in said cross-bill that from time to time down to a recent period this respondent acknowledged his
1063 indebtedness to his father and acknowledged that the said Edwin held the legal title to all said lands in trust to secure the payment of said indebtedness, this respondent, answering, saith that he has never made any other acknowledgments as to the facts of such indebtedness than of the character hereinabove set forth; that he has acknowledged the fact of having received said money from his father, but has always believed that since the time of said interview at Pittsfield his father considered said indebtedness practically cancelled, but this respondent denies that he has ever acknowledged that the said Edwin and the said Jason or either of them ever held the legal title to said lands in trust to secure the payment of said indebtedness.

And as to the statements in the said cross-bill in reference to the alleged appointment by the said Edwin of one Cephas Clapp as his, the said Edwin's, agent for the management and general supervision of said lands, this respondent denies all the same, and denies
1064 that *that* the said Cephas ever exercised any management over said premises save as *to* the agent of this respondent; that in the year A. D. 1861 this respondent enlisted in the 7 Regiment of the Illinois Cavalry, and when about leaving for the war this respondent employed the said Cephas to look after his personal property and also the said lands, and the said Cephas has from that time up to the first of September, A. D. 1867, transacted some business, more or less, every year for this respondent, but he has never paid any taxes on said land save at the order and with the money of this respondent and while acting under the pay of this respondent, and this respondent never knew until the filing of said cross-bill that the said Cephas claimed to be acting for any person but this respondent.

And as to the statements in said cross-bill that on or about the first day of April, A. D. 1864, the said Edwin sent the said deeds to the said Cephas, who was then a resident of said Lee county, Illinois, and as to the statement that they were so sent in order that the said Cephas, as stated in said cross-bill, might be the better able to
1065 protect the said Edwin's interest, this respondent, answering, saith that until the 24th day of January, A. D. 1868, he had no knowledge or information that the said deeds were in the possession of the said Cephas, and that he learned said fact at that time, as hereinafter stated, but he denies that the said deeds were so sent for the purpose stated in said cross-bill, and he saith that he acquired a knowledge of the fact in manner following: Some time in summer of 1867 the said Cephas Clapp told this respondent that he, respondent, had better get a deed from Ruggles of all said lands, as *as* he, the said Cephas, then stated and as respondent then well knew the legal title to said lands was then vested in the said Ruggles, and

that there was danger that the said lands would be attached to pay the debts of the said Ruggles.

And respondent saith that at that time the said Ruggles was engaged in business which kept him living some time in the city of Washington and at other times in New York city and at others in the State of Massachusetts, and that for some time respondent was

1066 unable to find just where the said Ruggles was; that in the month of January, A. D. 1868, respondent went to the city of Washington, and, not finding the said Ruggles there, respondent went to the city of New York, where he found the said Ruggles on the 10th day of January, A. D. 1868, and on said day a deed from the said Ruggles and wife conveying to this respondent all the said lands was duly prepared and entirely filled out, giving the names of all the parties to said conveyance and stating in full therein the consideration and the description of the premises precisely as all of the same now appear in said deed, and which said deed was, as to its execution by the said Ruggles, acknowledged by him, the said Ruggles, before a notary public, in the city of New York, on Saturday, the 11th day of January, A. D. 1868; and the wife of the said Ruggles being then at Chesterfield, in the State of Massachusetts, this respondent and the said Ruggles went where she was, and she acknowledged the execution of said deed eleven days thereafter.

1067 And at the time that she executed said deed she and her husband, the said Ruggles, executed and delivered to this respondent a certain other deed, purporting to convey a certain eighty-acre tract of land, other and different land from any involved in this suit, in which said other deed certain blanks were left unfilled and which said other deed respondent supposes is the one about which the said Edwin had received some information which may have led him to believe as stated by him in his cross-bill.

And respondent says he, respondent, on the 24th day of January, A. D. 1868, went to Pittsfield, Massachusetts, and saw said Edwin and said Jason and told them that he had got the deed from Ruggles for the premises in controversy, and that he wanted the said two deeds which had been made by them to the said Ruggles, as hereinbefore stated, and thereupon the said Edwin told this respondent that said deeds were in Illinois, in the possession of said Cephas, and that respondent could get them from the said Cephas by calling on him for them.

1068 That shortly thereafter respondent returned to his home, in said Lee county, and took to the recorder's office in said county for record the said deed so made to him by the said Ruggles, and respondent then found that one Ebenezer Lee Clapp had just commenced a suit in the circuit court of said county in which he had attached said lands as the property of the said Ruggles W. Clapp; that within a day or two thereafter respondent called upon the said Cephas Clapp to obtain the said two deeds, and the said Cephas Clapp then and there delivered the said deeds to respondent, and this respondent received them, and he and the said Cephas rode uptown together in said Cephas' sleigh; that respondent then went to Dixon, the county-seat of Lee county,

to consult with his attorney in reference to the said attachment suit, and at said interview exhibited said deeds to his said attorney, and it then appeared that the said two deeds had been mutilated.

And respondent further saith that it is not true that the said Cephas ever demanded from this respondent a return of the
1069 said deeds, but, on the contrary, respondent saith that on the day next after the one on which the said Cephas gave him the said deeds the respondent had an interview with the said Cephas, and the said Cephas said nothing whatever about any return of said deeds, nor has he ever claimed from this respondent any return of the said deeds.

And as to the statements made in said cross-bill as to any alleged borrowing by this respondent from the said Edwin of the sum of one hundred and thirty-nine dollars, and of the alleged verbal agreement that the said Edwin should *return* said deeds as a security for the repayment of said loan also, this respondent says that it is true that he did borrow said sum of money, but he denies that there was any understanding, agreement or even any proposition that any security should be asked or taken therefor except the note of this respondent; that when this respondent was in Pittsfield, in January, A. D. 1868, he told said Edwin Clapp he was ready to pay said note, and requested him to bring it
1070 to the hotel where respondent was stopping, and he soon after returned to the hotel without the note, saying he had forgotten it; that he would go back to his office and get it. This respondent did not see him afterwards.

And as to the statement in said cross-bill that there is a balance of one hundred dollars due to said Edwin on account of taxes and repairs this respondent says that he denies all the same, and saith that the said Edwin never paid or caused to be paid any taxes whatever on said land and never expended or caused to be expended any money for repairs on the same.

And as to the statements in said cross-bill in reference to the execution by said Ruggles of a deed to this respondent on the 10th day of January, A. D. 1868, and as to all matters stated in said cross-bill in connection therewith, this respondent saith, as he has already stated, that the said Ruggles did on or about said day execute a deed to this respondent of all the aforesaid lands, but he denies
1071 that said deed contained no description of any lands or the name of any grantee, and saith that when said deed was executed — did contain a description of all the said lands and did contain the name of this respondent and is in all respects the same now that it was at the time it was signed.

And respondent admits that the said deed was filed for record in said recorder's office on January 30th, A. D. 1868, and was duly recorded as in said cross-bill stated.

And as to all the statements in said cross-bill as to the manner in which this respondent obtained possession of the said Cephas of the two said deeds and all the statements in connection therewith this respondent denies each and every of the same, and saith that he has

already fully stated herein all the facts connected with the delivery to him of the said deeds by the said Cephas.

And as to all the statements in said cross-bill to the effect that on the 1st day of March, A. D. 1869, this respondent executed to one Lot Chadwick a pretended conveyance of all said lands for a pre-
1072 tended consideration this respondent saith that he denies all the same, but admits that on the said day he did execute and deliver to said Chadwick a good and sufficient conveyance of all said lands, and that said conveyance was made for the consideration of ten thousand dollars, therein named, and that the whole of said consideration has been paid by the said Chadwick to this respondent, and that the sum of about eight thousand two hundred dollars was paid at the time of the making of said deed, and the further sum of seven hundred and sixty dollars and eighty cents was paid by the said Chadwick, at the request of this respondent, at or soon after the time of the making of said deed, the said sum being paid in discharge of the judgment obtained by the said Ebenezer Lee Clapp in the suit commenced by him as aforesaid by attachment against the said lands on the property of the said Ruggles; and the further sum of three hundred and sixty-nine dollars and forty cents was, at and about the same time, paid by the
1073 said Chadwick, at the request of this respondent, to free said lands from the lien of two certain judgments obtained against this respondent, and the balance of the said consideration money was shortly thereafter paid in full by the said Chadwick.

And respondent believes it to be true that the said deed has been recorded in said recorder's office, as in said cross-bill stated, but he denies that since the execution of said conveyance he has in any way assumed to act as the owner of said premises.

And respondent, further answering, saith that he has been informed and believes it to be true that the said Chadwick has filed his bill in chancery in this court, as stated in the said cross-bill.

And, further answering, he denies that the said Chadwick accepted said conveyance for the purpose of enabling this respondent to defraud the said Ebenezer and the said Edwin or either of them.

And, further answering, respondent says that the said deed from the said Edwin to the said Ruggles had been filed for record in said recorder's office, and a certificate to that effect was endorsed
1074 thereon in said recorder's office before the said deed was returned by the said Ruggles to the said Cephas.

And, further answering, this respondent says that he has resided on said land continually from before the time that the said Edwin received the legal title thereto and down to and until the time when this respondent sold the same to said Chadwick, being for the period of more than sixteen years, during all which time he had the sole management and control thereof, and that since the date of the said sale to said Chadwick, who is the father-in-law of this respondent and is now well advanced in years, this respondent and his wife have, by the consent of the said Chadwick, continued to occupy a dwelling-house on said land, and this respondent has, under the direction of said Chadwick, transacted some portion of the business between said Chadwick and some of the tenants of the said Chadwick who

have been occupying the said lands, but that this respondent has in no other way exercised any authority or control over said premises, or over any of the said tenants, and he denies that he has or
1075 has had at any time since the said sale any legal or equitable interest in the said lands or in any part thereof.

And, further answering, he denies that the said Edwin Clapp has or is entitled to have any lien whatever upon said premises.

And, further answering, this respondent says that on the trial of the said suit so as aforesaid instituted by the said Ebenezer Lee Clapp against the said Ruggles, and which was commenced by attaching the said lands as the property of the said Ruggles, the said Cephas Clapp appeared as a witness on behalf of the said plaintiff in said suit, and shortly after the judgment was obtained therein it was assigned to the said Cephas, who caused an execution to — issued thereon, to be levied upon said lands, and the same were about to be sold as the property of the said Ruggles at the time when this respondent sold the same to the said Chadwick, all of which the said Edwin well knew at the time, and as long before that
1076 & 1077 as August the 28th, A. D. 1868, the said Edwin wrote a letter to this respondent and therein advised him, respondent, to pay said *said* Ebenezer Lee Clapp's demand, but said nothing whatever about him, the said Edwin, having any claim or interest in said property, either on his own account or as the trustee of the said Ebenezer.

And respondent further saith that at the time he made the said sale to said Chadwick he had not only had the sole and exclusive possession of said land for a long space of time, but had been in possession for more than a year of the said two deeds so delivered to him by the said Cephas, during all which time neither the said Edwin nor the said Cephas claimed, so far as this respondent knows, any right or interest in said premises, and during which time the solicitor of the said Edwin had caused said lands to be levied on as the property of this respondent; all of which matters were well known by the said Chadwick at the time he made said purchase.

And as to the statements in said cross-bill to the effect that certain payments —, to wit, the sum of thirty dollars on October 30th,
1078 A. D. 1863, and twenty dollars on October 30th, 1864, this respondent hath no knowledge as to the same; and if any such credits have been endorsed upon any evidence of indebtedness given by this respondent by the said Ebenezer Clapp, it has been done without the knowledge or direction of this respondent.

Without this, that any other matter or thing in the said cross-bill stated or charged and not herein and hereby well and sufficiently confessed and avoided, traversed or denied, is true to the best of the knowledge, information, or belief of this respondent.

And this respondent, having fully answered, prays to be hence dismissed with his reasonable costs by him in this behalf most wrongfully sustained.

HENRY CLAPP.

WILLIAM E. IVES,
Solicitor for Respondent.

Endorsed, to wit: Filed March 6, A. D. 1871. J. N. Hyde, clerk.

1079 STATE OF ILLINOIS, } ss:
Lee County, }

In Chancery. In the Circuit Court of Lee County, of the March Term, A. D. 1871.

The replication of Edwin Clapp, complainant, to the answer of Lot Chadwick to the cross-bill filed herein.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto saith that he does and will aver, maintain, and prove his said cross-bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this
1080 repliant is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays as in and by his said cross-bill he has already prayed.

H. B. TRUSDELL,
Sol. for said Edwin Clapp.

Endorsed, to wit: Filed this 10th day of April, A. D. 1871. J. N. Hyde, clerk.

1081 STATE OF ILLINOIS, } ss:
Lee County, }

In Chancery. In the Circuit Court of Lee County, of the March Term, A. D. 1871.

The replication of Edwin Clapp, complainant, to the answer of Henry Clapp to cross-bill.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto saith that he does and will aver, maintain, and prove his said cross-bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and

hereby well and sufficiently replied unto, confessed or avoided,
1082 traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays as in and by his said cross-bill he has already prayed.

B. H. TRUSDELL,
Sol. for Edwin Clapp.

Endorsed, to wit: Filed this 10th day of April, 1871. J. N. Hyde, clerk.

1083 *Answer of Ebenezer Clapp to Cross-Bill.*

STATE OF ILLINOIS, } ss:
Lee County, }

In the Circuit Court, to the February Term, A. D. 1872.

LOT CHADWICK
vs.
EDWIN CLAPP *et al.* } Original Bill.

EDWIN CLAPP
vs.
LOT CHADWICK *et al.* } Cross-Bill.

And now comes the said defendant, Ebenezer Clapp, and for answer to the cross-bill filed herein by the said Edwin Clapp says that all the averments of said cross-bill of which he has any personal knowledge are true, and that he believes all the averments thereof are true; and further saith not.

A. K. TRUSDELL, *Solicitor.*

Endorsed, to wit: Filed January 24th, A. D. 1872. J. N. Hyde, clerk.

1084 *Decree.*

STATE OF ILLINOIS, } ss:
Lee County, }

In the Circuit Court, of the February Term, A. D. 1879.

LOT CHADWICK
vs.
EDWIN CLAPP and MARY M. CLAPP. } Original Bill.

EDWIN CLAPP
vs.
HENRY CLAPP and LOT CHADWICK. } Cross-Bill.

This cause having been brought on for a hearing by stipulation of the parties in vacation on the twenty-sixth day of August, A. D. 1878, on the original bill herein and the answer of Edwin Clapp thereto and the replication of the complainant in the original bill

to said answer and the default of the defendant Mary M. Clapp, and also the cross-bill of Edwin Clapp and the several respective answers of Lot Chadwick and Henry Clapp to said cross-bill and the replications of the complainant in said cross-bill to said respective answers, and the proofs taken in said cause, and oral
1085 testimony and evidence taken and heard before the court on said hearing, and the court having heard the same and the arguments of counsel for the respective parties thereon, and the court having duly considered the same until now, on this fourteenth day of February, A. D. 1879, and being now sufficiently advised in the premises, the court doth find that the equities herein are with the complainant in the original bill, and finds that on the fourteenth day of October, A. D. 1853, one John F. Clapp was seized in fee of the following-described real estate, situate in said county of Lee, to wit: The east half of the southwest quarter of section number twenty-eight (28) and the east half of the northwest quarter of section number thirty-three (33), all in township number twenty-one (21) north, of range number eleven (11) east, of the fourth principal meridian; that said John F. Clapp did on said day sign, seal, execute, and deliver to one Jason Clapp and one Edwin Clapp a warranty deed, in and by which he conveyed to them his
1086 title to said lands, which deed was, on the twenty-ninth day of October, A. D. 1853, filed for record in the recorder's office of said Lee county and duly recorded therein; that on the twenty-ninth day of October, A. D. 1853, one Lewis Clapp was owner in fee of the following-described real estate, also situate in said Lee county, to wit: The northeast quarter of section number thirty-three (33), in township number (*21*) twenty-one (21) north, of range number eleven (11) east, of the fourth principal meridian; that said Lewis Clapp did, on the day last aforesaid, sign, execute, and deliver a warranty deed, in and by which he conveyed his said title in and to the lands last above described to the said defendant, Edwin Clapp; that said last-mentioned deed was on the same day of its said execution filed for record in said recorder's office and duly recorded therein; that afterwards, on the twenty-eighth day of November, A. D. 1855, the said Jason Clapp, together with Cecelia E. Clapp, his wife, made, executed, acknowledged, and delivered to one Ruggles W. Clapp a war-
1087 ranty deed, in and by which they conveyed to the said Ruggles W. Clapp all their title in and to the undivided one-half of the said east half of the northwest quarter of section number thirty-three (33) and the undivided one-half of the said southwest quarter of section number twenty-eight (28), all in township number twenty-one (21) north, of range number eleven (11) east, of the fourth prinpal meridian, and that said last-mentioned deed was filed for record in the recorder's office of said Lee county on the fifth day of December, A. D. 1855, and was duly recorded therein.

That on the said twenty-eighth day of November, A. D. 1855, the said defendants, Edwin Clapp and Mary M. Clapp, his wife, made, executed, acknowledged, and delivered to the said Ruggles W. Clapp a warranty deed, in and by which they conveyed to the said Ruggles W. Clapp all their title in and to the undivided one-half of

the said east — of the northwest quarter of section number thirty-three (33) and of the said east half of the southwest quarter
1088 of section number twenty-eight (28), and also all of the northeast quarter of said section number thirty-three (33); that on the fifth day of December, A. D. 1855, the last-mentioned deed was filed for record in the recorder's office of said Lee county, but was never in fact spread at large upon the records of said office, and that before the same had been spread upon the records of said recorder's office said deed was by some person unknown abstracted or taken away from said recorder's office and was afterwards by some person unknown mutilated and defaced by drawing ink lines across and over the signatures of the said defendants, Edwin Clapp and Mary M. Clapp, thereto, and also by the writing after each of their said signatures the words "no go."

And the court further finds that on the tenth day of January, A. D. 1868, the said Ruggles W. Clapp, grantee in the two deeds last hereinabove named, together with Emily B. Clapp, his wife, signed, sealed, executed, and delivered to one Henry Clapp (defendant
1089 in the cross-bill herein) a deed, in and by which they conveyed to the said Henry Clapp all their right, title, and interest in and to all the lands hereinbefore described; that said deed was duly acknowledged and was filed for record in the recorder's office of said Lee county on the thirtieth day of January, A. D. 1868, and duly recorded therein.

And the court doth further find that on the first day of March, A. D. 1869, the said Henry Clapp, together with Sarah A. Clapp, signed, sealed, and delivered a certain deed of conveyance, in and by which they conveyed to Lot Chadwick, the complainant in the original bill herein, all of the said parcels of land heretofore described; that said last-named deed was duly acknowledged by the said grantors therein, and on the thirtieth day of March, A. D. 1869, the same was filed for record in the recorder's office of said Lee county and duly recorded therein; that the consideration paid by the said Chadwick to the said Henry Clapp for the said lands so conveyed by the said last-mentioned deed was the sum of ten thousand dollars;
1090 that said purchase of said lands by said Chadwick was made in good faith for an adequate and valuable consideration, and that at the time of said purchase and conveyance thereof to him as aforesaid the said Lot Chadwick had no knowledge or notice of any equitable mortgage thereof in favor of said Edwin Clapp or Jason Clapp or Ebenezer Clapp or any or either of them, and he had not at that time any knowledge or notice, express or implied, that said deeds so made by said Jason Clapp and wife and Edwin Clapp and wife to Ruggles W. Clapp or either of said deeds had been deposited with the said Edwin Clapp as security for an indebtedness owing from said Henry Clapp to his father, Ebenezer Clapp, or as security for an indebtedness owing from said Henry Clapp to said Edwin Clapp, or that said deeds had ever been deposited with said Edwin Clapp for any purpose whatever.

And that when he so purchased and paid for said lands the said

complainant, Lot Chadwick, had no knowledge or notice, ex-
1091 press or implied, of the claim of the said Edwin Clapp to an equitable lien upon the said lands, as set forth in the cross-bill of said Edwin herein.

And the court doth further find that the said Lot Chadwick, complainant in the original bill, is a *bona fide* purchaser of said lands for an adequate and valuable consideration, and is entitled to hold the said lands freed and discharged from any lien, equitable mortgage, or claim thereon in favor of the said Edwin Clapp arising out of any of the matters set up in the cross-bill of said Edwin Clapp, and that the equities herein are with Lot Chadwick, complainant in the original bill and defendant in the cross-bill; and it is therefore ordered, adjudged, and decreed by the court that the title which the said Edwin Clapp had and held in and to the said undivided one-half of the east half of the southwest quarter of section number twenty-eight (28), and the undivided one-half of the east half of the northwest quarter of section number thirty-three (33), and all of the northeast quarter of section number thirty-three (33), all
in township number twenty-one (21) north, of range number
1092 eleven (11) east, of the fourth principal meridian, situate in said county of Lee and State of Illinois, passed to Ruggles W. Clapp and was vested in him on the twenty-eight day of November, A. D. 1855, by the said deed thereof on that day made, executed, acknowledged, and delivered by the said Edwin Clapp and Mary M. Clapp, his wife, to the said Ruggles W. Clapp, and that said title in and to said lands passed to Henry Clapp and was vested in him on the tenth day of January, A. D. 1868, by the said deed thereof on that day made, executed, and delivered by the said Ruggles W. Clapp and Emily B. Clapp, his wife, to the said Henry Clapp, and that the said title in and to said lands passed to the complainant, Lot Chadwick, and was vested in him on the first day of March, A. D. 1869, by the said deed thereof that day made, executed, and delivered by the said Henry Clapp and Sarah A. Clapp, his wife, to the said Lot Chadwick.

And it is further ordered, adjudged, and decreed by the court that the said Edwin Clapp and Mary M. Clapp, within ninety (90) days
1093 from the filing of this decree, make, execute, acknowledge, and deliver unto the said Lot Chadwick, complainant in the original bill, a deed of conveyance of all the said premises described in said deed of Edwin Clapp and Mary M. Clapp to Ruggles W. Clapp, bearing date the twenty-eighth day of November, A. D. 1855, to wit, the undivided one-half of the east half of the southwest quarter of section number twenty-eight (28), and the undivided one-half of the east half of the northwest quarter of section number thirty-three (33), and all of the northeast quarter of said section number thirty-three (33), all in township number twenty-one (21) north, of range number eleven (11) east, of the fourth principal meridian, situate in the county of Lee and State of Illinois, sufficient to convey unto said Lot Chadwick, his heirs and assigns, all the right, title, interest, and claim which said Edwin Clapp and Mary M. Clapp had in and to said premises on the twenty-eighth day of

November, A. D. 1855; and in case the said Edwin Clapp and Mary M. Clapp fail, neglect, or refuse to make such conveyance
1094 within the said time named herein, that then the master in chancery of this court is hereby appointed and authorized to make, execute, and deliver such conveyance for and in the name of said Edwin Clapp and Mary M. Clapp.

And it is further ordered, adjudged, and decreed that the defendants in the original bill pay the costs of said proceedings, to be taxed by the clerk of this court, and that execution issue therefor.

And it is further ordered, adjudged, and decreed that the cross-bill of the said Edwin Clapp be, and the same is hereby, dismissed at the costs of the complainant therein, to be taxed by the clerk.

The stipulation of the parties under which this cause was heard having provided the decree herein when rendered should be entered as of the May term, A. D. 1878, it is therefore further ordered, adjudged, and decreed that this decree be entered as of twenty-ninth day of May, A. D. 1878, being of the May term, A. D. 1878, of this court.

The defendants in the original bill and the complainant in the
1095 cross-bill herein except to the foregoing decree and pray an appeal, which is allowed upon the party perfecting such an appeal entering into bond in the penal sum of five hundred dollars, conditioned according to law, with security to be approved by the clerk of this court. The time for filing such bond is hereby extended until the twenty-sixth day of May, A. D. 1879, and the respective parties hereto are hereby granted until said last-named day to prepare and file herein a certificate of the evidence in the case.

WILLIAM BROWN, *Judge.*

(Endorsed:) Filed February 14, 1879. R. Warriner, clerk.

1096 STATE OF ILLINOIS, } ss:
County of Lee, }

I, Ira W. Lewis, clerk of the circuit court in and for said county of Lee, in the State aforesaid, do hereby certify that the foregoing are true and correct copies respectively of the original bill, answer of Edwin Clapp thereto, replication of Lot Chadwick to said answer, cross-bill of Edwin Clapp, answer of Lot Chadwick thereto, answer of Henry Clapp to said cross-bill, replication to answer of Lot Chadwick to said cross-bill, replication to answer of Henry Clapp to said cross-bill, answer of Ebenezer Clapp to cross-bill, and the final decree of court in a certain cause lately pending in said Lee county circuit court, on the chancery side thereof, wherein said Lot Chadwick was complainant and Edwin Clapp and Mary M. Clapp were defendants in the original bill and Edwin Clapp was complainant and Lot Chadwick, Henry Clapp, and Ebenezer Clapp were defendants in the cross-bill therein, as the same appears to me from the files in said cause now in my office remaining.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at Dixon, in said county, this twelfth day of September, A. D. 1885.

IRA W. LEWIS, *Clerk.*

1097 STATE OF ILLINOIS, } ss:
County of Lee, }

I, Ira W. Lewis, clerk of the circuit court in and for said county of Lee, in the State aforesaid, do hereby certify that the final decree of court mentioned in the foregoing certificate has never been appealed from, annulled, reversed, or set aside, and that the same is now in full force and effect.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Dixon, in said county, this twelfth day of September, A. D. 1885.

[SEAL.] IRA W. LEWIS, *Clerk.*

Endorsed: Filed Dec. 6, 1886. Wm. H. Bradley, clerk.

1098 Afterwards, to wit, on the first day of June, 1887, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Circuit Court of the United States in and for Northern District of Illinois.

JULIA H. MCLEAN and GEORGE E. MCLEAN *et al.*
vs.
RUGGLES W. CLAPP, HENRY CLAPP, ABIGAIL L. HASKELL, *et al.*, Defendants. } Foreclosure.

Know all men by these presents that we, Julia H. McLean, of Great Barrington, in the State of Massachusetts, and George E. McLean, of Minneapolis, in the State of Minnesota, as principals, and John G. Pillsbury and Albert W. Hastings, both of Minneapolis, in the State of Minnesota, as sureties, are held and firmly bound unto Ruggles W. Clapp, Abigail L. Haskell, Henry Clapp, William E. Ives, Jeremiah Tondrew, Nicholas Schuffelt, John Hinderman, Conrad Mealhouse, William C. De Pue, Sarah L. Chadwick, Charles W. Chadwick, Sarah A. Clapp, Jane Welsh, Martha L. Crombie, and Mary A. Chadwick and Abigail L. Haskell, administratrix of the estate of Lot Chadwick, deceased, defendants, their executors
1099 or administrators, in the penal sum of five hundred dollars, to be paid to said defendants, their executors or administrators; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 27th day of May, A. D. 1887.

Whereas the above-bounden Julia H. McLean and George E. McLean have taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by said circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-bounden Julia H. McLean and George E. McLean shall prosecute their said appeal with effect and answer all costs if they shall fail to make their plea good, then this obligation shall be void; otherwise to remain in full force and virtue.

JULIA H. McLEAN. [SEAL.]
GEO. E. McLEAN. [SEAL.]
JOHN S. PILLSBURY. [SEAL.]
ALBERT W. HASTINGS. [SEAL.]

Approved:
WM. H. BRADLEY, *Clerk.*

Endorsed: Filed June 1st, 1887. Wm. H. Bradley, clerk.

1100 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Julia H. McLean, George E. McLean, R. M. McLean, and William B. McLean are complainants and Ruggles W. Clapp, Abigail L. Haskell, Henry Clapp, William E. Ives, Jeremiah Tondrew, Nicholas Schuffelt, John Hinderman, Conrad Mealhouse, William C. Depue, Sarah L. Chadwick, Charles W. Chadwick, Sarah A. Clapp, Jane Welsh, Martha L. Crombie, and Mary A. Chadwick and Abigail L. Haskell, administratrix of the estate of Lot Chadwick, deceased, are defendants, as the same appear from the files and records of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this sixth day of October, 1887.

WM. H. BRADLEY, *Clerk.*

Endorsed on cover: N. Illinois C. C. U. S. No. 317. Julia H. McLean and George E. McLean, appellants, *vs.* Ruggles W. Clapp, Abigail L. Haskell, Sarah A. Clapp, administratrix, and Fletcher D. Clapp, Eva K. Mink, and Mary L. Shaw, heirs-at-law of Henry Clapp, deceased; William E. Ives, Jeremiah Tondrew, *et al.* Filed January 23, 1888.

Supreme Court of the United States.

OCTOBER TERM, 1891.

JULIA H. McLEAN ET AL.

v.

RUGGLES W. CLAPP ET ALS.

No. 31.

APPELLANTS' BRIEF.

Statement.

This is an action to foreclose a mortgage; and, incidentally thereto, to remove such obstacles (if any) as may have been placed in the way of such foreclosure by the fraud and contrivances of the defendants.

This mortgage was given Dec. 4, 1855, by Ruggles W. Clapp *et ux.* to the late Edwin W. McLean, to secure payment of four notes of that date, aggregating $5,918.66 of principal debt, the first (for $500 in twenty-five days) having been paid, and the other three remaining unpaid; interest at ten per cent. accruing thereon. (Record, 1, 2.)

The three unpaid notes are: for $1000 at five months; $2209.33 in twelve months; and $2209.33 in seventeen months from date: with interest on each at ten per cent. per annum. (Record, 1.)

Thus, the last-maturing note fell due May 4/7, 1857. *(Ib.)*

The bill in this cause was filed May 2, 1872. *(Ib.)*

In the meantime, several payments were made, as hereinafter specified; and Ruggles W. Clapp was, during nearly all the intermediate time, out of Illinois. (Rec. 121–2; 477 top; 538 top.)

The description of the mortgaged premises is upon the second page of the record; but is not thought to be material to this statement.

A statement of the relation of the several parties to this action to each other and to the land in controversy will enable us to better determine the character of their dealings therewith, whereby they all profited except Mr. McLean; their gain being his loss.

In 1855, Mr. McLean opened a store in Amboy, Lee Co., Ills., which, in the fall of the same year, he was desirous of selling out, that he might return to Massachusetts.

Ruggles W. Clapp was a railroad contractor and general speculator at Amboy. (Rec. 340 top.)

His brother Henry was living upon the *locus de quo* of this litigation, but was desirous of embarking in trade. (Rec. 84; 474, fol. 909; 535, fol. 1057.)

Both brothers possessed more "smartness" than honesty, and were of dissipated habits. (Rec., 126, 143 bottom.)

In 1852–3, Henry Clapp had gone into occupation of this land, then belonging to the Government; and when the land-office in that district was re-opened, after the Ills. Cent. R. R. Co. had made its selection, he desired to obtain the benefit of the entry made of the same. (Rec. 328.)

Accordingly, he bought three warrants of 160 acres each (the location of them being made up of one quarter-section and several eighties and forties—Rec.

57), one of Lewis Clapp, one of John F. Clapp and one of John S. Crow. (Rec. 328.)

When the year's credit granted him upon the purchase of these three warrants expired, Henry Clapp, being pecuniarily embarrassed (Rec. 328), asked the warrant-holders to convey to Jason and Edwin Clapp, for his (H's) benefit. *(Id.)*

Jason Clapp and Edwin advanced the necessary funds, and took the conveyance of the land as security.

Upon this subject Henry Clapp testifies ;—

"I borrowed some money of Edwin and Jason Clapp, and they holding this land as security therefor. They continued to hold this land until the
1855, when I paid up to Jason and Edwin Clapp my indebtedness to them, *and requested them to deed the above-mentioned lands to Ruggles W. Clapp*, FOR THE PURPOSE OF MAKING A MORTGAGE TO ONE E. W. McLEAN for a stock of goods R. W. Clapp had bought of McLean, which I have since learned was since done so." (Rec. 328.)

In the course of a suit between his (Henry's) father-in-law, Lot Chadwick, a defendant herein, and said Edwin Clapp, cousin of Henry, the latter (Hy.) testified upon this subject, in conformity with the averments of his answer (Rec. 404, fol. 909) ;—

" Some time in November, 1855 or 1856, I sent them $650—all they asked—and they, *at my request*, made a deed of said lands to Ruggles W. Clapp. There was a mortgage made to one McLean by Ruggles W. on this land for $6000, GIVEN FOR GOODS FOR ME." (Rec. 84.)

Thus, if the equity in this land was in Henry, he also was the real party interested in this purchase, and had and used $2,300 of these goods before the last note given for them had matured. (Rec. 317, bottom.)

The use of Ruggles' name was to shield Henry from his New York creditors. (*Id.*, 84.)

Jason and Edwin (separately) deeded to Ruggles,

November 28, 1855 (Rec. 483–4); and upon the fourth day of the following month he made this mortgage to McLean. (Rec. 57, 58.)

Jason and Edwin's deeds were filed for record December 5, 1855 (Rec. 483–4), and the mortgage upon the following day. (*Id.*, 58.)

If we correctly sum up the quarter-section and fractions covered by the mortgage at 480 acres, appraised at from $30 to $40 an acre, their gross value would be from $15,000 to $20,000 at the time suit was brought; about equaling the sum due upon the mortgage-notes. (Rec. 57; 122, Ans. 28; 142.)

When Ruggles W. Clapp and wife executed this mortgage of December 4, 1855, to the original complainant, Mr. Clapp's legal title to the lands therein described was perfect, as the complainant alleges (Rec. 2 top), and the answers of Messrs. Chadwick and Hy. Clapp admit, and the testimony shows. (Rec. 9, fol. 19; 16, fol. 36; 176; 317, fol. 546.)

There were no other encumbrances. (*Id.* 317, fol. 546.)

Ruggles W. Clapp and wife allowed our bill to be taken *pro confesso;* and Mr. Ives' answer does not dispute the soundness of the mortgage. (*Id.* 22.)

Immediately after this disposition of his affairs in Amboy, Mr. McLean went to Great Barrington, Mass., where he embarked in mercantile business, which he there continuously carried on to the day of his death, February 28, 1875. (Rec. 48, bot., fol. 116; p. 36, fol. 86.)

The small note ($500) having less than a month to run, he left with William E. Ives, a lawyer in Amboy, to whom Ruggles W. Clapp paid it in July, 1856 (Rec. 45, fol. 108), and the amount was forwarded by Ives to Mr. McLean.

When the last note fell due, in May, 1857, none of the three large notes had been paid. They were all

subsequently placed in the custody of Mr. Ives for collection, as his receipts therefor indicate. (Rec. 56.)

Ives was a practicing attorney in Amboy, and attended generally to legal matters for Ruggles W. Clapp (Rec. 61), which was a circumstance not within Mr. McLean's cognizance.

Ives received no money upon either of these three notes, but he surrendered them to Ruggles W. Clapp, the maker, fraudulently and in collusion with him, without any real valuable consideration, substantially in the manner following:—

In 1857, Ruggles W. Clapp promised, and Mr. Ives represented, to Mr. McLean that Ruggles W. Clapp would pay $2000 in cash, and exchange these three mortgage notes for other perfectly good securities (Rec. 53 bot., 54), and Mr. Ives asked permission to carry out this arrangement, which was only granted upon the express condition that the $1000 payment should be cash, and the substituted securities perfect. (Rec. 46.) Nevertheless, Mr. Ives, well knowing all the facts, fraudulently and in collusion with Ruggles W. Clapp, in a scheme to defraud the complainant, took and received from said Clapp, in lieu of cash, a draft of $1000 dated December 4, 1857, upon one Alfred Clapp, which draft went to protest, and nothing was ever paid thereon except $250, paid March 23, 1859. (Rec. pp. 2 to 5; fols. 5 to 9.)

In pursuance of the same joint scheme to defraud, and further to carry out the same, said Ruggles W. Clapp delivered and said William E. Ives received, in lieu of and in exchange for said three unpaid mortgage notes, the worthless notes of persons utterly insolvent, and conveyances (in fee and mortgage) of lands of no value, to a large portion of which the grantors had no title, and, as to other tracts, the grantors' equity therein was absolutely valueless; all of which was then well known to said Clapp and Ives; and these notes and conveyances were by them made and procured to be

made expressly for the purpose of defrauding said Edwin W. McLean by the exchange thereof for the three unpaid mortgage notes aforesaid, which were surrendered by said Ives to said Clapp, upon such exchange, in violation of said complainant's agreement with Clapp and instructions to Ives, and in fraud of complainant's rights, as said Clapp and Ives well knew and intended. *(Ib.)*

Five of the notes so taken in exchange by Ives from Clapp were signed by one William Jones, " his mark," dated Amboy, Ills., June 10, 1857, each for $200, payable in one, two, three, four and five years respectively, to the order of Ruggles W. Clapp, and by him indorsed *without recourse.* (Record, pp. 303–4.)

Three of the notes so taken in exchange by Ives from Clapp were signed by one Cyrus Craig, dated Amboy, Ill., Nov. 29, 1856; two of them for $1,000 each, payable in three and four years respectively; and the third for $1,400 in five years from date; all to the order of Ruggles W. Clapp, and by him indorsed *without recourse.* (Rec. 305.)

Mr. Ives also received from Mr. Clapp, upon this exchange, three notes of Curtis Cannon, each for $433.33, dated Aug. 1, 1857, payable in one, two and three years respectively, to the order of Ruggles W. Clapp, by whom they were indorsed *without recourse.* (Record, 55; 115 and 116.)

It will be noticed that *Mr. Ives omitted to inform Mr. McLean that Mr. Clapp's indorsement was without recourse. (Ib.)*

Except as secured by some equity in the Craig land, the eleven notes above-mentioned were of less value than the paper spoiled in making them.

As to Wm. Jones' impecuniosity, see testimony of his brother-in-law, Wm. B. Stewart, Esq., a lawyer at Amboy; and others. (Rec. pp. 129.)

Cyrus Craig testified to his own lack of means; and that he gave the notes bearing his signature upon

Ruggles W. Clapp's promise to give him a bond for a deed of certain land, which bond, within a week from Nov. 29, 1856 (its date, and that of the notes) *Ives* got of Craig and returned to *Ruggles W. Clapp.* (Rec., 116, 117.)

Curtis Cannon, an illiterate, itinerant farm hand or "tramp" (Rec. 133), related the like origin of the notes bearing his name, which (although he could not read them) he acknowledged. "I gave him notes, and there they be; I don't deny it." (Rec. 112–3.) But, upon further examination, swore that one should have been for $100 and the others for $200 each. (*Ib.*, 114, fol. 247.) He thus told how he came to give them, and that he received nothing therefor, and that he possessed no means;

Ans. He [Ruggles W. Clapp] come to me in the street, and, said he, I want to sell you a piece of land. Said I, I can't buy no land, for I am not able to at the present time. But, said he, that won't make no difference; I will take your notes. He wanted I should come into his office; then he and Perry both sot in. Well, then, I asked him where that land lay. He told me. Well, I knew the land. Then I asked him what his price was on that land. He said five hundred dollars. I told him it was too much, and he said he would furnish lumber for to put me up a small house and to fence it with. Well, I told him then, under those considerations, I would take it. Well, Perry went right at it then and drawed them notes up, and when he called on me to sign them, said I, where is the bond that you promised me for a deed? Well, said he, that won't make no difference to-day, said he, for I am busy and cannot draw it up this afternoon, but, said he, I will have it ready for you to-morrow. But when to-morrow come he had not time to get it up, and I called for it five or six times, and there was no bond for me. Then I called for the notes, and he said they was gone. Well, after I called for them notes I have never seen Woodbridge again. I have never seen him since. "Thereby meaning," as he added, "Ruggles Woodbridge Clapp"—"the man I gave them notes to;" and "never the scratch of a pen" did he get for them; "nothing." (Record, pp. 113–4.)

He stated that neither then nor at any time since had he been worth $500. (*Ib.* 115.)

Mr. Warwick, one of his employers, testified to Mr. Cannon's unbroken record of pecuniary worthlessness. (*Id.* 118.) So did Cephas Clapp. (*Id.* 122, 137.)

Mr. Cannon explained that the "Perry" who "drawed them notes up" was Clapp's clerk; (p. 114) and he will be seen to be the witness to "his mark" to the Wm. Jones' notes (*Id.* 303-4) and the notary who took the acknowledgemnts of the below-mentioned deeds from R. W. Clapp to E. W. McLean.

The makers of these notes, it can easily be believed, were unknown to Mr. McLean, as were the lands and the titles thereto by which they were "secured"! (Rec. 47.)

The deeds constituting such 'security' were three, viz.:—

First. Quitclaim deed, R. W. Clapp to E. W. McLean, Dec. 10, 1857, E ½ S. E. ¼ Sec. 6, T. 19 N, R 10 E, 4 P. M., Lee Co., Ills. (*Id.* 308, 309.)

Second. Same date, R. W. Clapp *et ux.* to E. W. McLean, S. E. ¼ of S. E. ¼, Sec. 30, T. 20 N, R. 11 E., 4 P. M. (Rec. p. 307.)

Third. Same to same, same date, S. W. ¼ of Sec. 12, T. 20 N., R. 10, E 4 P. M.

After Ruggles' failure to pay protested draft for $1000 on Alfred Clapp, which Ives had accepted in lieu of cash, Ives and wife, June 4, 1860, conveyed to McLean part of lot 5 in block 11, in Amboy, subject to a $400 deed of trust to David Welty, Swamp Commissioner, which it was recited should be paid by McLean. Ives had sold and conveyed this part of lot 5 to Ruggles W. Clapp, but no deed of it to Clapp had been recorded; so, at Ruggles' request, Ives made the conveyance of it to Mr. McLean; which explains the date. (Rec. 48, fol. 115, McLean; p. 367, fol. 652, Ives.)

The land mentioned in the quitclaim deed was stripped or 'stump' land, of no value. (*Id.* 4; 122.)

To that described in the second deed, Ruggles W. Clapp had no title (*Id.* 4.)

Two-thirds of that described in the third deed was mortgaged to its full value; from the other third, Mr. McLean managed to obtain $850 (*Id.* 4) through a sale made with the assent of Ruggles W. Clapp, *in the spring of 1863*, who directed that the proceeds should be applied upon the mortgage now in suit. (*Id.* 153: 306 Exs. 11 and 12.) These facts, then, are unquestioned: that, for two years from the sale of his business in Amboy to Ruggles W. Clapp, Dec. 4, 1855, Mr. Edwin W. McLean had security for the unpaid purchase-money to double its amount in this mortgage; that he had left the notes with Mr. Ives for collection, and as subsequently arranged to be exchanged upon payment of $1000 of the amount in cash, for good securities; that Mr. Ives, who was the regular attorney for R. W. Clapp in his business transactions (Rec. 61, 62) did exchange the perfectly-secured notes for the veriest trash; and surrendered them to Mr. Clapp while the draft on Alfred Clapp remained unpaid, although admitting that its payment was a condition precedent to any exchange. (Rec. 24, fol. 55.)

The issue as to Mr. Ives is, whether the transactions whereby Mr. McLean in fact lost nine-tenths of his claim were honestly conducted by his attorney to that unfortunate issue.

The honesty of Ruggles W. Clapp nobody appears to vindicate.

Such an undertaking was even too hopeless for him, so he let the charges go by default; although, it is true, he writes he had left an answer to be filed, if his brother Henry desired it (Rec. 363), but it seems to have been respectfully (or otherwise) declined, and finds no place in this record.

Whether Mr. Ives was *particeps criminis*, or merely

another victim of Ruggles W. Clapp's plausibility, we do not deem it vital to our cause to determine; since Ives never had any interest in the realty involved.

R. W. Clapp's rascality is too glaring to be denied or palliated. He was the only person known to us as the owner of these lands, and the mortgagor thereof. *His* fraud, whether participated in by any of the other defendants or not, entitled us to rescind any such exchange, and to rely upon our mortgage security.

From August, 1857, to the summer of 1861 (Rec. 46, 47) Mr. McLean was confined to his business in Massachusetts; and it was not until he was in Amboy in the summer of 1861, that he discovered the character of the papers taken by Ives from R. W. Clapp in lieu of the mortgage-notes, and rescinded and repudiated the transaction. (*Id.* 48.)

Ruggles W. Clapp was itinerant (*Ib.*) and his whereabouts unknown. (*Ib.*)

Therefore Mr. McLean left the papers with M. L. Arnold of Amboy, to be returned to Ruggles, if further examination confirmed A.'s impression of their worthlessness. (*Ib.*)

April 20, 1863, Arnold addressed a letter to R. W. Clapp upon the subject; evidently to the effect that, if R. W. C. would assent, the Craig equity could be sold to Hitchcock; but without R. W. C.'s consent to the sale and to apply proceeds upon the mortgage, nothing of the kind would be done. (Rec. 153, 306.)

May 15, 1863, acknowledging receipt and contents of Arnold's letter, in a reply from New-York, R. W. Clapp writes;

"About those notes and securities left in your hands by McLean, you write that they are worthless or nearly so. I think something can be made off from them. *You sell them and make the most you can;* APPLY ON MORTGAGE I GAVE MCLEAN." (*Ib* Ex 11.)

As to the balance, after such sale and application, he desires Mr. Arnold to negotiate some compromise with "brother Henry;" to promote which he was willing, and "would like," to turn in some land in Whiteside County; concluding,

"If you compromise the matter with Henry, have McLean *release the mortgage from record.*" *(Ib.)*

It will be observed that, to this hour, *the mortgage has never been discharged* (Rec. 177 top and 183 top) but its record has been perpetual notice to whomsoever it might concern of our claim upon this land.

Upon the tenth of June, 1863, Mr. Arnold again writes Ruggles W. Clapp, apparently enforcing upon his attention that Mr. McLean utterly repudiates the exchange, and relies upon the mortgage.

That letter reached Ruggles at Washington; and he responds from "Baltimore, Md., June 20th, 1863' thus;—

DEAR SIR, Your favor of the 10th inst. I received at Washington. In reply, I would say that I wrote you from New York about the middle of last month, giving you full particulars how to proceed. I think it would be well to *sell the Craig property, get the most you can, and apply on the McLean mortgage.* The notes, you say, are worthless, or nearly so, except what can be made off the Craig property. *I see no other way for you to do in the case but to make what you can out of the securities, and apply on mortgage,* AND FALL BACK ON THE LAND TO MAKE UP DEFICIENCY.

I think it would be well for you to see my brother Henry *again.* and see if you can in any way effect a compromise. He has written to me *recently,* stating that you had been to see him, and had offered to settle for fifty cents on the dollar, but that you had effected no settlement, although *he thought he would be able to do so.* As I wrote in my last, *do the best you can,* and any compromise you can make with Henry will be satisfactory to me. *I want the matter closed up.*" (Rec. 306–7.)

This is more than an admission that the nature of the pretended substitution of 'securities' was such as to give Mr. McLean the *right* to rescind: it is a full recognition of the *fact* that he had rescinded, and an acquiescence in such rescission and its consequences.

Ruggles W. Clapp avowedly resumes ownership and control of the substituted property, directs its sale according to Mr. Arnold's best judgment, constituting him *R. W. Clapp's agent* for *this* purpose, and indicates the application of the proceeds upon this mortgage, as an existing indebtedness, and a lien upon the property, to which resort must be had for any deficiency. He offers to turn out Whiteside Co. land to diminish the deficiency, and hopes any balance may be compromised with Henry, to whom the land in equity belonged, subject always to this incumbrance thereon, created at Henry's request and for his benefit.

Both parties to the original mortgage, and to the debt it secured, are hereby shown to have acceded and agreed to the proposition that it was *not* paid by the fraudulently-procured and unauthorized surrender of the notes by Wm. E. Ives to R. W. Clapp.

Nobody else had any power in law, or claim in equity, to prevent or object to this mutual recognition by the parties of an existing *fact*, based upon the assertion by Mr. McLean of an indisputable legal right.

Subject to this mortgage, Henry Clapp might have an equity in this land; but *Henry Clapp had no equity in his brother's fraud*, so as to acquire an indefeasible title to the benefits of it.

June 20, 1863, (except as it had been lessened by cash payments thereon) this mortgage stood precisely as it did Dec. 6, 1855, when it was placed upon record.

The effect of Ruggles W. Clapp's letters are that, from this spring of 1863, instead of R. W. C. taking the Craig and other property back into his own per-

sonal custody, it should remain as *collateral* to the McLean mortgage, in lieu of being substituted for it.

Acting upon these instructions, Mr. Arnold continued negotiations with Mr. Hitchcock for the Craig property, which he (H.) agreed to take, but neglected to pay up for, until March 12, 1868, when (at Hitchcock's request) it was conveyed to Cephas Clapp, for $850, (and taxes from April, 1864), applicable as so much paid upon the mortgage, as of that date, by Ruggles W. Clapp. (Rec. 193–4.) It seems Hitchcock had a bond for a deed, and it was the last payment of the purchase-money (making in all $850) that was made March 12, 1868. (*Id.* 153.) His agreement to purchase was prior to the taxing-time of 1864, the taxes of that year to be paid by him. (*Id.* 153, 167, 313.)

The balance, above taxes and expenses, was the amount which, according to Ruggles W. Clapp's directions, was to be applied to the mortgage. It was, and had all the effect of, a payment thereon, March 12, 1868.

Two months before this, that is to say, on the tenth day of January, 1868, Henry Clapp, manifestly knowing all the facts, went to Washington, New York and Massachusetts and procured from Ruggles W. Clapp a conveyance of all Ruggles' interest in the land in controversy, by a *quitclaim* deed of that date. (*Id.*, 506).

It only purported to quitclaim whatever right, in law or in equity, Ruggles had. (*Ibid.*) He unquestionably had the equity of redemption from this mortgage, and professed to transfer no more than just such right, etc., as he had. Nor, with his knowledge (or if he had been absolutely ignorant of all prior transactions between the parties to the record) could Henry Clapp assert any claim which Ruggles could not.

That Henry did know of McLean's repudiation of the pretended settlement, of the fraud whereby Ruggles got possession of the notes, and of R.'s assent to the re-

scission of the exchange, the testimony shows; and this would be fairly inferred from the circumstances of the case. (Rec. 151 *et seq.*; 83 bot.)

March 1st, 1869, Henry Clapp conveyed this property to his father-in-law, Lot Chadwick (Rec. 508) who, from that date became the only person ostensibly interested in the equity of redemption of these premises, except the pretended claim of Edwin L. Clapp (hereinafter casually mentioned) to a lien upon it and such interest as certain original defendants had merely as tenants under Mr. Chadwick, but who did not answer the bill.

The large volume of testimony (admissible or inadmissible) which this record presents was mainly introduced with reference to its tendency—directly or indirectly—to prove or disprove that Lot Chadwick took this conveyance well knowing the actual state of the title, the transactions between the parties (including the method of obtaining Ruggles' notes to McLean from Ives) and that Edwin W. McLean's continuing lien upon the premises was as just and well founded in law and fact as it was manifest upon the County's records of deeds and mortgages.

This question, thus presented, we will hereinafter discuss, although it seems to us wholly immaterial to the real issue, and is investigated out of deference to the different idea with which the cause was tried and which this Court may consider correct.

If the record of this mortgage imported to Lot Chadwick, and all others whom it might concern, precisely the same ultimate fact (of an incumbrance) which they would have known had they been thoroughly acquainted with everything that transpired, actual knowledge or ignorance of all these details we suppose to be entirely immaterial.

Lot Chadwick had no equity in Ruggles W. Clapp's fraud, to insist there should be no rescission on account of it.

Whatever its legal bearing (if any) we feel sure the record will be convincing that Ruggles and Henry Clapp, William E. Ives and Lot Chadwick were, each and every of them, either participants in one joint, or connected and continued, scheme of fraud, or had such knowledge or equivalent notice of the frauds actually committed as to deprive either of them, and especially Lot Chadwick, of any right or power to pose as an innocent, *bona fide* purchaser for value, without notice.

The undischarged mortgage, spread upon the county records, was of itself notice to everybody; and put all intending purchasers upon inquiry.

Let us first call attention to the relation and association of these individuals with each other, and the circumstances which afforded the opportunity for, and invited, the scrutiny of each to the state of the title to these lots.

EDWIN W. MCLEAN was a man engaged in mercantile pursuits, knowing as little of law and of the location, value and title to Western lands as the ordinary New England shopkeeper.

He had come, in 1855, to Amboy, Ills., where he kept a country store for a few brief months.

Selling out in Amboy in December, 1855, he goes into business at Great Barrington in March, 1856. (Rec. 48 bottom.) Naturally, he relied upon payment from his old business to enable him to carry on the new. Not getting his pay, when due, embarrassed him temporarily *for money* during the panic and hard times of 1857. (Rec. 382–3.)

Without the funds he was entitled to have sent him from Amboy, Mr. McLean emerged from his financial diffi-

culties without bankruptcy or insolvency (Rec. 51.) and, as we confidently assert, without anything being said or done by him to the impeachment of his integrity. His letter of Jan. 22, 1858 to his attorney, Ives (Rec. 383), which the latter makes the pretended justification of his own dishonesty, suggests nothing of the kind, and states nothing but actual facts.

His character and conduct stands unimpeachable throughout this record. He was a thousand miles away from Amboy and had to rely upon citizens there residing to look after his interests there, and to report to him truly as to persons and things with whom and which these interests became involved.

Ruggles W. Clapp.

Ruggles W. Clapp—his accidental business transactions with whom was to Mr. McLean the source of all his woe—has by his conduct therein justified the reputation given him by his acquaintances and relatives. (Rec. 64; 104; 132; 348-9; 353.)

He was a man of intelligence and education, a roving speculator, of dissipated habits, but possessing shrewdness and the ability to impose upon and influence men. (Rec. 132 mid.; 340 top.)

Whatever Ruggles W. Clapp's genereral character might be, as to these transactions with Mr. McLean his fraud stands confessed; (Rec. 134 bottom.) leaving only the inquiry, whether or not the other principal defendants (Ives, Henry Clapp, and Chadwick) participated therein.

Wm. E. Ives.

William E. Ives was a lawyer at Amboy, shown to be himself a dealer in real-estate there, and from the nature of his profession certain to know the values attached to land by those whose conveyances he drew, and with the

character and pecuniary reputation of persons living in the neighborhood.

He was the special attorney of Mr. McLean in this matter, and the usual, general attorney of Ruggles W. Clapp in his real-estate and other transactions. (Rec. 56, 61.)

A test of his honesty is his own answer, that he did *not* receive the notes as McLean's attorney; but that, when given, they were by the agreement and for the convenience of the parties, left with him (Rec. 23 top.) not as a lawyer, but as their "MUTUAL FRIEND"! (Rec., 9 bottom.)

Indeed, comparison of his answer with the subsequently established facts indicates the nature of his *friendship*, who profited thereby, and the value of his word.

The three mortgage-notes here in question were given Dec. 4, 1855. The last fell due May 4–7, 1857. Ives' pretense (Rec. 23 top.) that the notes were left with him "at or soon after their date" and merely "as a matter of mutual convenience" is *false;* his sworn testimony (Rec. 365) given after his receipts (*Id.* 56) had been introduced, contradicts his answer. (*Id.*—23.) They were sent "for collection," in 1856 and 1857, separately, as each was about to mature. (*Id.* 45, fol. 108 and 365.)

Ives' relation to McLean was that of attorney to client; that of Ives to Ruggles W. Clapp was also that of friend to friend, whose countenance *sharpened* one another. *Noscitur a sociis.* (Rec. 380.)

Ives considered, and repeatedly declared to McLean, that the latter had full, ample and perfect security (in the mortgage now in controversy) for the $5418.33 remaining due, and ten per cent interest accruing thereon, etc. (Rec. 51, 52, mid. and bot.)

The five and eleven month's notes ($3209.33 of principal) matured in May and November, 1856, respectively. Dec. 10, 1856, Ives wrote McLean;—

"I have not the least doubt but that you will get the whole of your money when the last note becomes due, for he knows that if he does not pay *then* the mortgage will be foreclosed without delay. *Nothing shall be left undone on my part that I can do to get the money* that is now due you at the earliest possible moment, but you know *I cannot do anything* NOW *but to appeal to his honor as a man to pay.*" (Rec. 51–2.)

Was not this *false?* Could he not have proceeded to *foreclose the mortgage* for the breach thereof in non-payment of these overdue notes? Instead of suggesting this course, he advises that he "cannot do anything now."

The denial in his answer (Rec 23) *not* repeated in his testimony (*Id.* 364–379) that *he first suggested exchange of securities* is contradicted by his letters to Mr. McLean of July 10, 1857, ending, "I shall probably see you next week" (Rec. 53 bottom); letter of July 28, 1857, commencing, "I arrived home safely on Saturday last." (*Id.* 54 top.)

In August, 1857, Mr. McLean went to Amboy. (Rec. 46.) Mr. Ives' recollection, that it was "perhaps in Sept. or Oct." of that year; "perhaps a little before that" (Rec., 370, 374) is corrected by his own letter of Sept. 15, 1857. (*Id.* 54.)

The letters show the payment (whether $2000 or $1000) was to be "*cash.*" McLean so testifies. (Rec. 46.)

Mr. Ives' subsequent acceptance of Ruggles W. Clapp's draft on his brother Alfred in New York, instead of cash, was done of Ives' own motion; and his testimony that, when the securities were put into his hands "by McLean in the presence of Mr. Clapp" "Among the securities was a draft of $1000 given by R. W. Clapp, payable to Mr. McLean, upon Alfred Clapp of New York City, which was taken by McLean, and I was directed, upon notification of the payment of that draft to surrender up the notes and mortgage given by

Clapp to McLean, and retain the other securities" (Rec. 366 top) will be seen to be palpably *false*. He states it differently, and in this one particular according to the facts and correspondence, upon cross-examination (Rec. pp. 376–7, fols. 671–2) where he 'weakens' upon his statement that Mr. McLean saw the papers proposed to be given in exchange for this mortgage before they came into Ives' hands.

The exchange was not made until December, 1857, months after McL. had left Amboy. (Rec. 307–8.)

Whether ever seen by Mr. McLean or not, they were not approved by *his* judgment; but the examination of them, to ascertain if they were 'good' and 'well-secured' was left with Mr. Ives. (Rec. 46, fol. 110.)

That the exchange was to take place *only* upon receipt of $1000 cash is established. (Rec. 46 middle; and p. 377, fol. 672, cross-int. 71.) Ives took the draft brought him by R. W. Clapp, after waiting "thirty days or *more*" for the cash. (*Id.* 376, bottom.) It was over ninety days 'more' than thirty; since McLean was there in August. Ives writes Sept. 15, 1857, about R. W. C.'s failure to pay as agreed (Rec. 54) and the draft was forwarded in letter written in December, 1857. (*Id.* 383.)

That letter (*Ibid.*, Ex. No. 3) is as follows;

"AMBOY, Dec. 1857.

MR. E. W. MCLEAN:

DEAR SIR—Enclosed please find draft for $1000 from R. W. Clapp, which you will please acknowledge, when rec'd. *I* have *nearly* made arrangements with Clapp, as we *talked* of doing when you were here, though I SHALL NOT DELIVER UP ANY PAPERS UNTIL THIS DRAFT IS PAID. If that should be paid when due, I think that THE ARRANGEMENT I HAVE MADE will *then* be CONSUMATED. I hope all *will be* satisfactory to you."

McLean "several times" charged Ives *not* to surrender mortgage-notes until this sixty-day's draft was paid, " and *then to be sure the securities were good.*

I cautioned him strongly upon that point in every letter." (Rec. 46, fols. 110, 111.)

Nevertheless, Ives did make the pretended exchange of so-called 'securities' before the draft matured, and without payment of a dollar. (*Ibid.*; and Ives' letter of *May* 20, 1858, at p. 284 top.)

In another litigation, Mr. Ives testified (during Mr. McL.'s lifetime) that he surrendered these mortgage-notes "as *sort of voluntary* agent for McLean." (Rec. 78, fol. 179.)

Indisputably, then, MR. MCLEAN HAD THE RIGHT, WHEN THIS SO-CALLED EXCHANGE OF 'SECURITIES' WAS MADE TO REPUDIATE IT AS A FRAUD UPON HIM IN WHICH IVES AND R. W. CLAPP WERE PARTICIPANTS.

He was insisting upon *cash*, and they foisted upon him bogus papers.

THE PRETEXT UPON WHICH THIS FRAUDULENT TRANSACTION IS BASED WAS AS FALSE AND FICTITIOUS AS ALL THE REST OF IT.

Ives pretends he did it to cheat McLean's creditors.

In his letter of *Jan. 22*, 1858, stating the financial difficulties into which R. W. Clapp's course had involved him, Mr. McLean states nothing but the absolute truth, having truly stated his position to his creditors, and he only asks Ives to corroborate actual facts; neither suggesting, hinting at, nor contemplating, any fraud. (Rec. 383, fol. 686.)

Deferring any statement of what he had done till *May 20*, 1858, Ives then sends (as 'confidential') this *false* explanation:—(Rec. 384.)

"At the time the check [draft] was drawn, *I made the arrangement* with Clapp, as directed by you when there, [which was to take $1,000 *cash* and securities found upon examination to be good] and deposited papers with Ambrose & Little; and, *when I received your letter containing your statement of your probable*

failure, I IMMEDIATELY *exchanged papers with Clapp* and took good and sufficient security for the payment of the check, which must be paid.

The notes which I took in exchange for Clapp's notes are those notes against Craig and Cannon, secured to be paid by warrantee deed, so the payment when due, must be prompt, or the parties lose the land.

The title to the said land is in you and on record in this county, according to law.

I rec'd a letter some time ago from your creditors, stating that the mortgage against Clapp and in your favor you had assigned to them and that all payments should be made to them. I think the exchange of papers with Clapp is without question *the best thing for you that could be done. I don't think we could have made on that mortgage Clapp gave you one single cent,* for to my great surprise on a thorough examination of the records, that *R. W. Clapp never had a title* to that land mortgaged to you to secure those notes, but I do know he had a deed from which that mortgage was made to that land. But it appears that he never put it on record, so, if we had litigated the matter with him on that mortgage it would have cost a large sum and a long time before it would have been brought to completion. But *the papers I now have you can have no trouble with* for you *must* have the money when due or the land. I do not know how your matters stand relative to your New York creditors; but *if I were in your place if you could turn out the notes in my hands to them, and thus release you from embarrassment, I would do it.* The check which you have from Clapp I do certainly believe will be paid *in a few days,* as the payment of it is amply secured. I am *almost* willing to say to you that if Clapp does not pay it within 30 days I will pay it, and take the property on which it is secured. When the check is paid, or before if you desire, I will give you a full statement of the notes and land which I have taken by your instruction of Clapp. I think I have *done well for you in this matter,* and if I can do anything for you in your New York matters I will most certainly do it. As I said before *if you can turn these matters to your creditors you had better do it.* I have had a very troublesome job of this matter, but think it is all right. Let me hear from you on receipt of this." (Rec. 384.)

This letter shows the hasty exchange precipitated by the unfounded assumption that Mr. McLean would have to assign. Doubtless, it was feared, if some lawyer or shrewd merchant were assignee, the scheme would be frustrated, unless at once carried out. At all events, it is apparent Mr. Ives considered the notes and deeds he accepted assets eminently suited to a bankrupt's schedule; and hastened the exchange with this view.

His pretext that Mr. *McLean* could be thereby benefited is absurd. Had Mr. McL. been as ready to cheat his creditors as Ives was to suggest it, this exchange could only accomplish this purpose in case the substituted paper was worth *less* than the Clapp notes and mortgage. Had Mr. McLean been as dishonest as Ives, and entertained any such design, he could have negotiated and assigned the Clapp notes and mortgage to any friend, leaving no record-trace; but the real estate conveyances which 'secured' the Jones-Craig-Cannon notes precluded such concealment. For the purpose of really paying his creditors, the Clapp mortgage notes were as much more valuable than the substituted 'securities' as they were for a personal investment.

Ives' manœuvre ignored Mr. Wemmick's Walworth opinion that 'portable property' is the most available in an emergency.

For *any* honest purpose no lawyer could sincerely assure Mr. McLean that this exchange was "the best thing" for *him*. The assigned reason is *false;* viz. that the mortgage Clapp gave was "not worth a cent" because a "*thorough* examination of the records" showed "R. W. Clapp never had *a* title to that land mortgaged to you," though the writer *knew* "he had a deed from which that mortgage was made to that land." *(Ib.)*

The most cursory examination would have shown that *Jason* and Edwin Clapp's deeds to Ruggles were

placed upon the record. (Rec., 69, fols. 159–160; 71 bottom; 77 bottom; *317, fol. 546; 466, fol. 882.)*

Did this statement convey any adequate idea of the actual facts? (*Id.* 77.)

It is sufficient to say, however, that no such defect of title was any inducement offered either to Ives or to Mr. McLean for the exchange, since it was never professedly known to Ives nor communicated to Mr. McLean until months after this had been effected.

The mortgage was accepted upon the faith of the Clerk's abstract of Dec. 5, 1855, that the title was clear, and the Jason and Edwin Clapp deeds to Ruggles that day filed for record (Rec., 317.)

After Ruggles had "two or three times" falsely stated to him that this draft was paid, Ives—without the slightest pretense of authority—accepted from him, in lieu of the cash payment which was Mr. McLean's condition precedent to any exchange, what Ives calls "good and sufficient security for the payment of the check, which *must* be paid." (*Supra;* Rec. 384 top.)

It will be noticed that this letter in no way indicates the character of the 'security' so taken, except by the adjectives "good" and "sufficient."

Ives answers (falsely) that he was not called upon to consider the soundness or comparative values of the exchanged 'securities.' He cannot deny his obligation to determine the sufficiency of the security he took (without any previous authority) for the payment of the draft.

He is bound by his statement to Mr. McLean that this was 'good' in quality and 'sufficient' in quantity.

First, as to its *quality.*

This includes its suitability to Mr. McLean's occasion.

He wanted *money,* for *present* use. (Rec. 24, fol. 56.) Ives had promised to hold the papers, until the draft was paid. (Rec. 383.) This sixty-day draft, drawn

December 4, 1857, by Ruggles upon his New York brother Alfred (Rec. 306, fol. 523) had been *refused acceptance* as this very letter of Jan. 22, 1858, McLean to Ives, stated; and it was protested for non-payment when it fell due, the next month. In the latter part of January, upon receipt of this letter of the 22d, Ives surrendered the mortgage-notes, taking as 'security' for the payment of this unaccepted draft the following, according to the averments of his answer. He there avers (Rec. 25.) that he had previously contracted or promised to sell to Ruggles W. Clapp *(at a price nowhere indicated)* that small portion of lot 5, block 11, in Amboy, known as "the Market Lot" (because there was a butcher's shop upon it) subject to a mortgage of $400 to David Welty. The answer says *(ubi sup.)* no deed, Ives to Clapp, of this lot, had then been drafted; but that, subsequently, he made out a deed *to Clapp*, "which deed had *never been delivered*," but was by Ives "*forwarded to the said complainant, to be by him held until said draft should be paid*"! (Rec. 25, bottom.)

This portion of the answer is responsive to no allegation of the bill—which, moreover, waives answer under oath (Rec. 6, top)—but may, perhaps, be taken as Ives' admission of the nature of the (then undisclosed) security which his letter to Mr. McLean of May 20, 1858—three months after the protest of the draft—refers to as so "good and sufficient" that the draft *must* be paid!

If Mr. Ives "did then [January, 1858] or shortly after make and execute a deed of said Amboy property to R. W. Clapp" *(Ib.)* which was never delivered, it is manifest that no such deed was, for many moons, "forwarded to the complainant." *(Ib.)*

Eight months after the draft, *so* 'secured,' went to protest, Mr. Ives' letter of Oct. 18, 1858 (Rec. 385) communicates to McLean that the draft, *then held in Ives' custody*, "is secured by a store and lot" worth $1,500

which Ives will sell to satisfy the draft, if not paid within twenty days from that date. *(Ib.)*

Mr. McLean evidently had no knowledge beyond this. He is not told that the lot is an irregular parcel, of but 18 feet frontage, (which a hasty computation from diagram, Ex. A. p. 183, fol. 347, shows to contain not over 1080 square feet from its front to rear apex) in the little village of Amboy, subject to a prior incumbrance; and that the 'store' is a butcher's shop, with a room over it temporarily occupied by a paint shop! (Rec. 289.)

March 7, 1859, is the date of Ives forwarding to Mr. McLean the deed *to Clapp* of this lot. (Rec. 385, bottom.)

Not until *June 4th, 1860*, did Mr. Ives substitute a deed to Mr. McLean for this one running to R. W. Clapp. (*Id.* 310; 48, fol. 115.)

Then was the first moment Mr. McLean held any paper which *purported* to put him in possession of anything out of which he could realize one dollar towards the payment of this draft.

Like every other instrument or transaction with which Ruggles W. Clapp or William E. Ives had any connection, this deed was a delusion and a fraud; for *Ives had conveyed all his interest* in lot 5, block 11, to his brother in law (Rec. 436 top.) Dr. Geo. Ryon, *July 14, 1859*, by *deed recorded the same day!* (Rec. 178, fol. 339.)

Therefore, it is of minor consequence that the calls of the deed to McLean were "indefinite and irregular," and *could not be applied to this market lot*, on the face of the earth! (*Id.* 177 middle.)

The acquisition and state of Ives' title to lot 5, block 11 in Amboy, is thus shown by the Clerk of Lee County, who also demonstrates the inapplicability thereto of the deed to Mr. McLean. (Rec. 177 to 186.)

It is a fractional lot, bounded northerly by Main

street, east by lot 4, and southwesterly by a diagonally-running private alley; *i. e.* one not indicated upon the plat of the town. (*Id.* 177.)

June 21, 1855, Allen Wilcox conveyed all of this lot (5) to William E. Ives. (*Id.* 178 mid.)

Dec. 28, 1855, Ives conveyed the easterly 36 feet of lot 5 to Joseph D. Weddell; the entire front line of lot 5 being 67.1 feet. (*Id.* 183, fol. 347, Ex. A.)

His deed of trust to David Welty (*Id.* 184) March 4, 1856, commences at the N. W. corner of lot 5 (where the alley and street intersect) and runs east 31½ feet, thence at right angles south to the alley, then along the westerly side of the lot to the place begun at; thus conveying all not conveyed to Weddell.

July 14, 1859, he conveys all his interest in lot 5 to Dr. Ryon. (*Id.* 178, fol. 339.)

The deed June 4, 1860, to Mr. McLean (Rec. 310) commences 31 feet west of the north-*east* corner of lot 5—which would be a point *five feet east of Weddell's west line* (*Id.* 177-8); thence eighteen feet west, "thence south on a line parallel with the *west* line of said lot to said alley" (*Id.* 310, mid.)—an impossible call, so long as parallel lines cannot meet—the west line of the lot being the alley-lines (*Id.* 183, Ex. A.); then along the alley to Weddell's land, and by W.'s land to the point of beginning; (*Id.* 310,) subject to the $400 incumbrance of the deed to Welty. *(Ib.)*

Whether or not this instrument could have been reformed, as against the holders of Dr. Ryon's title, is entirely outside the inquiry into the goodness and sufficiency of the security for which Mr. Ives tells Mr. McLean he is lucky to have swapped off the Clapp notes and mortgage, which might have subjected him to costly and tedious litigation. (Rec. 384.)

It is its character as *security*, not how effective a chancery court might (or might not) ultimately have made it as a *deed*, that we are considering.

We will postpone to a later page the examination of

his lame excuse for these conveyances—which excuse will be found to bear the usual ear-mark of his transactions.

As to the *quantity*, or sufficiency of this 'security' it was *nil*—or a minus quantity.

The previous conveyance to Dr. Ryon rendered it *no* security.

But aside from this fraudulent deed to his brother-in-law (see Dr. Ryon's own statement, pp. 434–5) and the misdescription in that to Mr. McLean, this equity in a little strip of land in Amboy was really no security, had Ives' title to it been clear on the record, June 4, 1860, and his deed to McLean of that date precise in its terms.

The complainant called eight witnesses who variously estimated the value of building and lot, from 1858 to 1860 inclusive, at from $250 to $500. (Rec. 199, fol. 376; 220, fol. 404; 236, fol. 424; 250 middle; 269 near bottom; 289; 290 near bottom; 302.)

The defendants' three witnesses' estimates varied from $1700 to $2000—allowing *$400 or $500 for the lot* itself. (Rec. 489 top; 493 top; 496, fol. 957.)

Conceding that witnesses are to be weighed, and not counted, let us scale these *opinions* by certain undeniable *facts*.

Buying lot 5 in June, 1855, Ives sold the easterly 36 feet to Wendell in December, same year, and in the following March mortgaged *all* the rest (including this market lot and the N. W. corner, upon which his own office stood (*together with lot 13, block 16, and lot 4, in block 8*), to David Welty to secure $400! and in 1865 this market lot and the office lot *together* brought, at Welty's auction-sale, $510! (Rec. 183 to 186.)

Besure, the building had burned in the meantime; but Mr. Ives' peculiar method of 'securing' Mr. McLean gave the latter no insurable interest at the

time of surrender of the Clapp notes; nor did he ever have any, because of the deed to Dr. Ryon.

Another fact;—in 1864 or 1865, Mrs. McMahon bought 18 feet of this very lot 5 of Ives for $400. (Rec. 236 near bottom.)

July 14, 1859, when Mr. Ives wished to secure Dr. Ryon for unremembered and uncalled loans, amounting to $1500, he conveyed to him not only these market and office lots, but "several pieces, several lots, including the property where Briggs now lives" (Rec. 434 middle)—this latter being the premises conveyed by Ruggles W. Clapp to Ives for an alleged consideration of $4000 (one-half in bonds besides the Ashley store-lot) (*Id.* 59, fol. 143; 130 top.)

That is the way he secured a brother-in-law, unasked!

There is testimony in the record (page 120 bottom) to the effect that R. W. Clapp conveyed this Briggs property (Lot 3, Block 25) to Ives as compensation for the latter's assistance in obtaining the former's notes from Mr. McLean. (Rec. 121.)

The *date* of this conveyance of lot 3 etc., block 25, adds force to this testimony. It was *February 16, 1858: just after the draft on Alfred Clapp matured;* (Rec. 306; 129 bottom; and 195) and but a week or two after the reception by Ives of Mr. McLean's letter of Jan. 22, 1858, which Ives writes (May 20, 1858) was his reason for an immediate surrender of the mortgage notes. (*Id.* 383–4.)

It has another bearing. The correspondence shows Mr. McLean begging Ives to get him some money, by collecting the draft; Ives replying that Ruggles W. Clapp keeps promising, and is expecting funds from various sources, but is disappointed, as times are hard and money scarce, etc.;—while, at the very time this draft which had gone to protest (although so well 'secured') was forwarded by McLean to Ives the latter

purchases this lot 3 block 25 of Ruggles, giving him two $1000 school-bonds, worth very nearly par in the market, besides a deed of the Ashley store on Main Street, Amboy! (Rec. 382–5; 59 to 61.) If Mr. McLean could have obtained one of these bonds, would it not have subserved every honest purpose better than the mere retention by Ives of the title to this little lot of land in Amboy?

Upon this subject, Mr. McLean testified May 26, 1873. (Rec. 44, fol. 106.)

The accuracy of his testimony went unchallenged during his lifetime; and not until Sept. 2, 1884 (Rec. 364) long after the death of Mr. McLean and the revival of this suit, did Mr. Ives offer his version of these transactions.

It will not be found, however, to contradict, but to support, Mr. McLean's assertion that the exchange, *when and as made*, was unauthorized; and it will be seen that where it assumes to contradict Mr. McLean, it is shown by admitted facts to be false.

As to his transactions with Ruggles W. Clapp, especially in respect to the matter of the "security" for the draft, which we have just been considering, it will be seen how his testimony conflicts with his answer, the latter *not* being under oath. (Rec. 28.)

As to the surrender of our mortgage-notes and the "security" taken for the draft, he testified —;

"The draft was not paid on presentation, and some time after—I don't know how long—McLean wrote to me that he had *got into difficulty* in his business, and I *then* took security from Clapp for the payment of this draft and surrendered to Clapp the notes and mortgage given to McLean by him and retained the other securities." . . . After receiving the letter from Mr. McLean of January 22d, 1858, "I *very soon* took security of Clapp for the payment of the draft of $1000 and surrendered to Clapp the notes and mortgage given by him to McLean, retaining the other securities in my hands. . . .

I had previously sold *and deeded to Clapp* a store situate on part of lot 5 in block 11 in Amboy and Mr. Clapp at the time I sold it took possession of the building, but had not had his deed recorded, and *he surrendered to me the deed I made him* and the possession of the building as security for the payment of that draft. *That* security, *the deed* (I *think*) was sent to McLean, stating to him just what he had done, and it remained in that way for some time; and afterwards—some time afterwards—at the request of Mr. McLean and Clapp, I conveyed this same store-building to McLean, and meantime (I *think*) McLean had possession of the building and of the rents and profits. McLean was *at my office about the time the deed was made*—I *think*, at the time—and accepted the deed and received from me all the securities which he had left in my hand in regard to the matter, and expressed no dissatisfaction whatever as to what I had done, but seemed to be satisfied with the store and lot as full payment for the draft, and I never knew he was dissatisfied until nearly ten years afterwards." (Rec. 366–7.)

Ives' *answer* (Rec. 25, fol. 59) filed Aug. 13, 1872 (*Id.* 28, fol. 67) states that, at the time of the surrender, the lot sold by respondent to Ruggles W. Clapp had *not* been conveyed to him; that, then or shortly after, he executed a deed to R. W. C. which, if delivered, would constitute a *perfect title* to the lot, "but which said deed was *never* in fact *delivered*," but was forwarded by respondent to complainant as security for the draft. (*Id.* 25, bottom.)

His testimony, Sept. 2, 1884, as above recited, commencing with the false implication that the draft had been presented *for payment* prior to his receipt of Mr. McLean's letter of Jan. 22, 1858, states that he had "previously sold *and deeded* to Clapp" a store on lot 5, block 11 and that Clapp was *in possession* under his deed, which had not been recorded; so "he *surrendered the deed* I made him and the possession," as security for that draft; which deed, I *think*, was sent to McLean, *stating to him just what he* [*sic*] *had done.*"

'Delivery' was an important fact, as affecting this deed. If never *delivered*, Clapp never had acquired title, and the instrument might be placed as an escrow in Mr. McLean's hands; but, if R. W. Clapp had taken the deed and possession under it, the handing back of the deed would not affect the actual title. He says he stated just what had been done :—*which* statement did he make—that of his answer, that the deed had *not* been delivered; or of his testimony, that it had been? for it would be material for anybody advising Mr. McLean, in Mass., to know this. *Neither:* he, in fact, *stated nothing* of what had been done. His letter (Rec. 384 top) states nothing as to the security taken, except that it is "good and sufficient." (See *supra*, p. 21, top).

Ives' deed to Clapp was enclosed to Mr. McLean, March 7, 1859. (Rec. 385 bottom.)

The deed directly from Ives to McLean was made June 4, 1860. (Rec. 310.)

The statement that McLean was at Ives' office when this deed was made (as Ives "*thinks*") or "about the time" (as he swears) is *false.* Mr. McLean was not in Amboy between August, 1857, and 1861, when he discovered the character of this exchange and repudiated it. (Rec. 46; 48, and *fol. 115.*)

Ives states *(supra)* the "acceptance" of this deed and of the exchanged securities as concurrent acts, or one act. Then it must have been in 1861. (Rec. 46 *et seq.*; 151, fol. 299.)

The record, at these pages, shows Mr. McLean's expressed *dis*-satisfaction.

Mr. Ives' statement of the reason why his prior deed to Dr. Ryon did not mar the perfection of the "security" existing in his later deed of the same property to Mr. McLean is akin to the rest of his testimony. To understand it properly, we must bear *dates* in mind; therefore, they are repeated.

July 14, 1859, Ives' deed to Ryon is made and recorded. (Rec. 178, fol. 339.) June 4, 1860, he makes

his deed to Mr. McLean, and has it recorded on the sixth day of that month. (Rec. 310, 311.)

He swears that Dr. Ryon never came into possession of that part of lot 4 sold to Clapp; but that when the Ryon deed was made, "Mr. McLean, OR HIS AGENT, was in possession." (Rec. 368, fol. 655.) That is, on the 14th day of July, 1859.

But, on that day, *Mr. Ives was himself the agent of Mr. McLean*, who was not personally in possession; nor in Amboy between August, 1857, and the summer of 1861.

The occupation by the grantor (Ives) could not be adverse to his grantee (Ryon) nor any notice of an interest existing in anybody else; there being nothing *then* outstanding against the Ives title except an unrecorded (if delivered) deed to Ruggles W. Clapp. Mr. McLean could not defeat Ryon's title by any such showing. It required peculiar ideas of the law to call such a status "good and sufficient security."

Another branch of this testimony:—the draft matured Feb. 4/7, 1858. (Rec. 306, fol. 523.) Ives writes Mr. McLean that he surrendered notes "immediately' upon receipt of letter of Jan. 22, 1858. *(Id.* 384 top.) He testifies that the deed to Clapp was not made until "*February* or March," 1858; (Rec. 375, fol. 669) and he thinks the purchase of lot 11, block 25 (Briggs property) was "in March or April, 1858" (Rec. 368 bottom) whereas it was in fact *February* 16, 1858 (Rec. 195) and the deed was filed for record in Dixon on the 18th of that month, at 9 A. M. *(Id.* 196.)

So his deed to Clapp, which constituted McLean's "good and sufficient security," and Clapp's deed to him, for which he swears he paid $4,000 (Rec. 368 bottom) were in fact contemporaneous, if not connected!

He swears he paid Clapp $4000 at the very moment this protested draft was in his hands for collection!

Admitting that the deed to McLean wrongly made the west line run parallel to the west line of lot 4 (Rec. 370, fol. 659) he does not admit, nor account for, its including five feet front of land previously conveyed by him to Weddell!

HENRY CLAPP.

No doubt, defendants' counsel will feel constrained practically to abandon any attempt to vindicate the character, personal or professional, of William E. Ives.

The next person to be considered, in connection with these transactions, is HENRY CLAPP.

Though a man of intelligence, he was "poor, dissipated and reckless," "never worthy of trust," always keeping his property covered up from his creditors, and any interest in real estate in the name of some relative or friend who held the legal title. Buildings occupied by him were an extra-hazardous risk for an insurance company.

Rec. 96, fol. 211; 98, fol. 214 and bottom; 99, fol. 217; 100, fol. 218; 101, bottom; 102, fol. 223; 144, fol. 289; 204, top; 241; 244, fol. 434; 266, fol. 465; 268; 328, fol. 569; 333, fol. 580; 406, first line.

Illustrative family traits are perceived in the dealings of Ruggles and Henry Clapp with the title to the mortgaged land.

As already noted (*supra*, p. 3) it will be recollected that, to keep it from his creditors, the title placed in the hands of Jason and Edwin Clapp had been by them transferred to Ruggles, for the purpose of buying this stock of goods of Mr. McLean therewith.

Accordingly, Dec. 5, 1855, a certificate that the title to this land was clear and that the deeds thereof from Jason and Edwin to Ruggles had been filed for record

was obtained from the Recorder's Office, to show Mr. McLean (Rec. 317 ; fol. 179).

That the deeds were so filed is unquestioned; and both actually copied *in extenso* upon the county records (Rec. 77, 466).

We have mentioned that, while still recognizing our mortgage as an existing incumbrance, Ruggles W. Clapp had conveyed the equity to Henry, by whom the land was sold to Lot Chadwick, who became alone interested in the title to the land, and the only person to be affected by the validity of our mortgage.

Henry Clapp had as perfect a right to convey *the equity* to Mr. Chadwick as he had to receive it from Ruggles; but to convey nothing more.

The earlier dealings of Ruggles and Henry Clapp with this land and with the deeds thereof, serve to characterize the conveyance of it to Lot Chadwick by Henry Clapp—at least so far as the latter is concerned.

With this in view, let us see what they did to embarrass and defeat Mr. McLean's lien upon this land, immediately after its creation, and when there could be no pretense that he had voluntarily relinquished it. Attention is, as always, to be directed to the dates. (see "Decree," Rec. pp. 107 to 109).

November 28th, 1855, Jason Clapp and Edwin Clapp make each a deed to Ruggles W. Clapp, which are filed for record in Dixon, Dec. 5, 1855 (Rec. 67), and a certificate of such filing was that day given by the recording officer. (*Ib.* 317.) That certificate was delivered Mr. McLean to induce him to accept the mortgage in suit (Rec. 57) dated Dec. 4, 1855, but taken and recorded Dec. 6, 1885. (*Id.* 58 bottom.) Upon the faith of this mortgage, the McLean stock of goods was turned over nominally to Ruggles W. Clapp, really for Henry Clapp's benefit. (*Id.* 84, 328.) The Jason and Edwin deeds naturally would come back from the Recorder's Office into the hands either of the nominal grantee or of the equitable owner of the property. It would appear

that Ruggles took them and returned them to the grantors, with the statement that they had *never been recorded or used.* (Rec. 104, fol. 226.) Henry Clapp made the same statement. (*Ib.*) This was WITHIN *six months* after their date; *i. e.* after Nov. 28, 1855. (*Ibid.*) This would be about the time of the maturity of the $1000 mortgage-note to Mr. McLean; and long before the maturing of the two larger mortgage-notes. (*Id.* 56.) The purpose of such return was, to secure payment of a loan of $2600 made by Ebenezer Clapp to his son (Henry) for which a note had been given to Jason and Edwin, as trustees for Ebenezer. (*Id.* 104, fol. 227). Henry Clapp states it to be August 5, 1856, that he received $2600 from his father, and that no security was given for it (*Id.* 84, fol. 190); but the note itself, to Jason and Edwin, bears date July 18, 1856 (*Id.* 103; 107 bottom) so the loan was certainly as early as that, and might have been prior to the making of this evidence of it. Even the first mortgage-note for $500 (though payable in twenty-five days from date) was not paid to Mr. McLean until this month of July, 1856, (Rec. 45, fol. 108.) So, after obtaining a stock of goods worth $6000 from Mr. McLean by means of this land, it is fraudulently used to secure a $2600 loan from Ebenezer Clapp, while McLean remained wholly unpaid.

Although, in the suit between Lot Chadwick and Edwin Clapp,—the voluminous record of which swells the bulk of our transcript—the courts of Illinois ultimately held (Rec. 484-5; 69 Ills., 119 to 127) Mr. Chadwick not to have had knowledge or notice of any equitable lien of Edwin Clapp upon this land, to secure the $2,600 loan, that adjudication does not concern us here: but the fact—undisputed upon that record, and indisputable here—that the Clapps (Ruggles and Henry) did thus conspire so to deal with this land, in fraud of Mr. McLean and his rights, is a circumstance material to be now considered.

That record shows Henry Clapp subsequently stole these deeds from the house of Cephas Clapp (Edwin's agent) and presented an altered and erased deed—*not* the one from Ruggles to him—to be recorded, as if perfect; and refused to have it presented upon the county records as it actually appeared. (Rec. 89 bottom; 90–1; 92, fol. 204; 93, fol. 206; 96 middle.)

Henry Clapp not directly dealing with Mr. McLean as to securing the purchase-price of McL.'s stock by this mortgage, there was no personal communication between them; but it is made apparent that Henry conspired with Ruggles to cheat Mr. McLean of his security before the notes matured, as Ives and Ruggles did after their maturity.

Lot Chadwick.

We repeat the expression of our inability to perceive how the question whether Lot Chadwick took the equity with actual knowledge and notice of our mortgage, or in ignorance of it, can be material; inasmuch as he was bound by the statutory notice which the filing of it for record afforded: but we will (as before observed) fortify our equitable claim, if not our legal right, by presenting a summary of that testimony and those facts which indicate actual personal knowledge, direct notice, and specific information, of the precise status of Mr. McLean's lien, and of his assertion of its existence as indicated by the county records.

Upon the 14th of September, 1869, after taking his title in the preceding March—our mortgage plainly appearing then as now a record incumbrance upon this property, and Mr. Arnold being the mortgagee's known agent in Amboy asserting the same—Mr. Chadwick brought a bill against Edwin Clapp to clear the estate of an alleged *equitable* lien (*not* of record) asserted by

the latter. (Rec. 67 to 110; 441 to 487; and 502 to 548.)

He brought *no* bill for the cancellation of our mortgage, and its discharge upon the county records; and addressed no word to Mr. McLean upon the subject.

We will further observe the present case to be very different from the one between Mr. Chadwick and Edwin Clapp.

The pleadings, record and decrees of that litigation, as reproduced in this transcript (pp. 67, 441 and 502) as well as the report of it and the opinion of the Court in 69 Ills. 119 to 127, show Edwin's claim to have been of an *equitable* lien or mortgage, created by the promissory letter of Oct. 2, 1867, from Henry to Edwin (Rec. 89 bottom.) and a deposit of the title deeds to secure a loan; of which facts and pledge it was alleged Lot Chadwick had notice when he took his title. The family connection between Mr. Chadwick and Henry and the neighborhood repute of the title being in "some Clapp East" were relied upon to establish such notice; but were held by the Court insufficient for that purpose. (69 Ills. 122–4.) The mere mention by M. L. Arnold to Mr. Chadwick of the Edwin or Jason Clapp claim, *at the time Mr. Arnold was interviewing him about this McLean mortgage*, was held too indefinite to consstitute *actual* notice of *Edwin's* claim. (*Ib.* 124, 125.)

"On this occasion, Arnold exhibited the abstract of title which he had in his possession, before referred to as shown to Ives when he drew the McLean mortgage." (69 Ills. 124–5.)

The rest of the opinion (69 Ills. 125 to 127) discusses only the question whether or not Mr. Chadwick did pay any valuable consideration for the conveyance from Henry to him; and finds that he did; *explaining its apparent inadequacy by observing, "The title was embarrassed by a mortgage in favor of McLean, made by*

R. W. Clapp in 1855 for some $6,000." (*Ib.* 126 bottom.) The opinion concludes with remarking that, although there was a claim that it was satisfied, yet "it remained unsatisfied upon the record," and Arnold had been trying to effect a compromise with Henry; so that the mortgage was a cloud upon the title, tending to depreciate the value to be paid for it, (*Ib.* 127, top).

That is to say, Mr. Chadwick obtained this property for half its market-value *because* he took it subject to the contingent liability of having to pay this McLean mortgage. The Illinois court substantially so states the fact. (69 Ills. 127 top, as *supra.*)

The adjudication in Chadwick vs. Clapp (Rec. 543–7) being in a cause to which we were neither party nor privy, and relating to a subject-matter which did not concern us, cannot bind us; nor do we perceive what relevancy or materiality it had to entitle it to be offered here in evidence (as it was) *by the defendants;* although *we* have a right to use, as admissions, the pleadings and testimony of those parties thereto who are defendants in the present action; and to accept in evidence what our opponents offer, so far as we may choose to do so.

At page 83 of the present record will be found Mr. Arnold's testimony (in Chadwick vs. Clapp) that he exhibited the abstract of title to Messrs. Chadwick and Henry Clapp, at Chadwick's house, *in the winter of 1868*—Chadwick not taking deed from Henry till March 1, 1869—(Rec. 508, fol. 983.); and is "certain Chadwick then saw mortgage" and "asked Henry if he had the mortgage released, and told him to get one and get the matter compromised the best way he could." Immediately thereafter (see same page of record; *i. e.*, 83) Lot Chadwick is recalled; swears he was present during part of the conversation testified to by Mr. Arnold, which he thinks "was *about the McLean mortgage* alone;" all he could distinctly remember being that there was such a mortgage, and the notes had been delivered up,

and the mortgage was worthless. (Manifestly, *that* was not *Arnold's* position or statement, but Henry Clapp's reply to it, which more impressed Chadwick because he wished to believe and accepted it.)

Thus it is shown that the existence of this mortgage was admittedly called to Mr. Chadwick's attention before he took title, and this is the ground of the assumption of the Illinois Court that he paid the land's value, so encumbered.

The fact that Arnold gave *some* warning notice is indisputable; but the Illinois court concludes (upon the evidence then before it) with Mr. Chadwick, that it related to the McLean mortgage alone;—in which only Mr. Arnold had any interest; and, because this warning was understood by Mr. Chadwick to be so confined to this mortgage, the Court held whatever was said to be no notice of the Edwin-Clapp lien. (See 69 Ills., *abi sup.;* and 3 Ills. St. Dig., title "Notice," § 34, 144.) Inasmuch as this lien was the sole issue in that controversy, the testimony directly adduced was simply such as bore upon that subject; and Mr. Arnold's mention of his being at Mr. Chadwick's house with reference to the McLean mortgage was then merely incidental and narrative, leading up to the statement that Edwin Clapp's "claim" was mentioned, though, it appeared, too indefinitely to constitute any "notice" of that actually set up by him. (Rec. 83).

There was no indefiniteness about the actual notice of the McLean mortgage; but, as it was not then in issue, the reference to it was casual and scanty.

Now that it is in issue, we have, in the present record, not merely further evidence with relation to Mr. Chadwick's knowledge of its actual status, but also as to the character of the transaction between him and his son-in-law, the nature and disposition of the consideration alleged to have been paid by him, and other circumstances which, had they been developed upon the trial of Edwin Clapp's case, might well have in-

duced the State court to take a different view of Mr. Chadwick's right to be deemed either an innocent purchaser or one for value—even as to the Edwin-Clapp lien.

This record shows, certainly, that he cannot be so considered as to Mr. McLean's mortgage.

Henry Clapp, who was born June 25, 1823 (Rec. 84, fol. 189) having been "burned out" in the East, came to Illinois some time prior to 1848 (Rec. 98, fol. 214: 100, fols. 218 and 219) and knew Lot Chadwick from that time. (Rec. 84, fol. 189; 327, lower part.)

In the spring or summer of 1866 Henry Clapp's wife died, and Oct. 1, 1866, he took as his second wife Mrs. Mulligan, the divorced daughter of Lot Chadwick. (Rec. 78, fol. 180; 93, fol. 206; 96, fol. 211; and 102, first line; 135.) Prior to, and at the time of, his first wife's death Henry Clapp lived but fifty rods from Lot Chadwick's, with whom Mrs. Mulligan resided. (Rec. 79, fols. 182 and 181; p. 85 near top; p. 119, fol. 254.)

Chadwick, as well as everybody else who knew Henry Clapp, knew him to be dissipated, dishonest and insolvent. (Rec. 417, fols. 757–8.)

Yet Mr. Chadwick says he lent Henry, upon his unsecured note, Oct. 15, 1867, $1500; Dec. 20, 1867, $3156; and smaller amounts to bring up the total indebtedness, March 1, 1869, when he took title, to over $6000! (Rec. 389, fol. 702.)

In doing this, Mr. Chadwick says he "depended on the farm" which he believed Henry owned, "although the title was in other hands" (*Id.* 417, fol. 757); giving as his reason for not asking a mortgage,

"Because *the land was under cover to secure it from his creditors*, and I believed that he would pay it; presumed that I could get it through the land if he did not pay it." *(Ibid.)*

His credit was not very good, I should think, at that time. His credit was not good because his land was held by others in trust, which I supposed I could

reach (as I did reach it) through a course of law, if necessary." (*Id.*, fol. 758.)

His object in buying, he says, was "to save himself," the farm being "under execution and advertised for sale." (*Id.*, p. 395 top.)

Probably this was because Henry refused to dedicate any of this $6000 to the satisfaction of this execution!!

This execution, however, issued upon a judgment in favor of Ebenz. Lee Clapp against *Ruggles W. Clapp.* (Page 389, top.)

Its levy upon this land was a pressing invitation to *any* intending purchaser to scrutinize the title.

Accordingly, Mr. Chadwick,—in addition to the abstract which Ruggles W. Clapp procured to show Messrs. Ives and McLean to induce acceptance of the mortgage in suit—had the statement of title brought down to March 3, 1869, the day he had the deed to him of March 1, 1869, recorded, and before its record. His testimony, properly punctuated, is;—

"Mr. Clapp procured the first abstract up to a certain date. On the 3d day of March, 1869, *I had the abstract completed to that date* by Mr. Ball, deputy-recorder." (Rec. 408, ans. 67.)

To Cross-Int. 126, he replies;—

I examined the Recorder's Office, and ascertained the claims that was against the land. I should add the court records. I examined into the case of Lee Clapp with the Sheriff. I examined into the Recorder's Office and the Circuit Clerk's Office, and also the Treasurer's Office to see what taxes was against it. This was on the day the deed was recorded, but before it was recorded." (Rec. 413, fol. 749.)

He assigns this reason for his search;—

"Because, *if I found anything that was important out of the way, I could go back on the proceedings*, and not have it filed for record." *(Ibid.)*

Thus, before his transaction with Henry Clapp became *un fait accompli*, Mr. Chadwick had a full state-

ment of the title to March 3, 1869; and there was reserved to him a *locus pœnitentiæ*.

He fixed the price at the low sum of $10,000 "*because* the title was embarrassed." To defeat Edwin Clapp's claim cost him $5,000; and he anticipated "some *more* of this kind" when he bought. (Rec. p. 406 middle.)

Why this anticipation, if he supposed this mortgage released, and that everybody acquiesced in the fact that it was settled? (Rec. 83, 323.)

Why such anticipation, if he never heard aught said about the mortgage? (Rec. 392.)

Why imagine any trouble, if he supposed it had been fairly paid and released? and had heard of no unfair practices?

In this respect, he protected himself not merely by the *amount*, but by the *nature* and *disposition* of the alleged consideration, even if it actually passed between them as stated.

Although Mr. Chadwick several times spoke of the "money" he paid for this land (Rec. pp. 78 and 79, 414, etc.) we will confine our attention to the items of his detailed statement of the consideration alleged to have been given for Henry Clapp's deed to him. (Rec. pp. 388 to 390; in tabular form, at pp. 74 and 75.)

Summarizing this, it shows *loans* by Chadwick to Henry, between October 15, 1866, and March 1, 1869, *aggregating over six thousand* dollars ($6035.22); paid executions against Henry, $379.38; taxes, $370.50; Henry's store-bills, incurred *and to be incurred*, $302.87; expenses of conveyance, $11; an *execution against Rugles W. Clapp*, $760.80; and, for the residue, the *unindorsed* note of Sherman Shaw to Chadwick, ($1000) and Lee County bonds, $1150. (Rec. pp. 74, 75, 389, fol. 702 and page 416 top.)

The motive or *causa causans* of the transaction was the levy upon the land of the execution against *Rugles* W. Clapp. (*Id.* 394–5.)

This, as we have said, was an invitation to scrutinize the record with reference to the title in him (Ruggles) and as affected by his holding the same, including incumbrances created or occasioned by him, of every description.

Accordingly, Mr. Chadwick had the search of title brought down to date, while still in a position to "go back on the proceeding" (as he said; Rec. 413, fol. 749; and 407, cross-ints. 60 and 61.)

The transaction was with a known insolvent, who (whether that fact was mentioned by him—as his son Fletcher swears (p. 141 bottom)—or not) never had, prior to 1868, during twenty years residence in Lee County, held title to property in his own name, for fear of creditors; and against whom were outstanding unsatisfied claims, judgments and executions. (Rec. 84 middle; 328 middle; 389 fol. 702; and *supra*, pp. 40, 41.)

The omission to indorse the Shaw note we consider to indicate the understanding that its delivery, and that of the bonds and other papers were merely formal, and without any real purpose of transferring title thereto.

The subsequent disposition actually made of them confirms this view. When cross-examined in the Lee Clapp suit (Rec. 86) Henry Clapp refused to state anything upon this subject, beyond the bald statement that Chadwick re-purchased the Shaw note at its full amount; his "business interest" not permiting him to tell what he did with the proceeds, or with the Lee Co. bonds, etc. Compelled thereafter, by order of the Court, to testify upon this point, he deposed that *he gave both the money and the bonds to his wife, Chadwick's daughter* but "don't remember"—*non mi recordo*—*how soon* after receiving these Lee Co. bonds from Chadwick, he handed them to Chadwick's daughter. (Rec. 88 bottom.) Nor had he refreshed his memory, so as to state this *when first asked*, when testifying in the present case: still "don't remember." (*Id.* pp. 323-4.) At the top of page 325, it would seem to have been "*shortly* after."

(N. B. This top line should end with a period, and the second line commence a new sentence.) Immediately after this, he swears the bonds were delivered to his wife "but a few hours after receiving them." *(Ib.)* In another deposition herein, he swears (Oct. 16, 1873) in answer to these questions:—

Cross-Int. 42. What did you do with said bonds?

Ans. I gave them *at that time*, or soon after to my wife to take care of and *dispose of* for the benefit of myself, wife and family.

Cross-Int. 43. Where are said bonds now, if you know?

Ans. I *decline to answer* that.

Cross-Int. 44. Were said bonds disposed of by your wife, if so, when, where, and to whom?

Ans. I *decline to answer* that. I suppose they were disposed of for cash. (Rec. 335 top.)

As further explaining Mr. Chadwick's ability to "go back on the proceeding," this witness states, as to the paper representing the $6000 said to have been loaned him by Chadwick:—

"I don't mean that he delivered the notes to me at the hour the deed was made, but that it was that day, *or shortly after.*" (Rec. 337 bottom.)

Additional significance attaches to this statement of both parties as indicating that the formal counting and exhibiting of notes, bonds, etc., conducted in presence of Esquire Bodine, was *not* the actual consummation of the negotiation, even according to their own story. (Rec. 106 middle; 348.)

The idea which impressed itself upon Mr. Bodine's mind was that the conveyance was only made for the purpose of "*trying to beat some claims on the place.*" (Rec. 295 top.)

See, also, p. 296: at the bottom of which page Mr. Bodine states (only what Mr. Chadwick himself testified, in the Edwin Clapp suit) that Mr. Chadwick put the consideration low because *he expected to have to litigate the title;* Mr. B. understanding him to refer to

both the Edwin Clapp and the McLean claims (Rec. 296 and 297 top and at fol. 500 and bottom of page), whereas the Illinois Court understood him to refer only to our mortgage. (69 Ills. 126, bottom, and 127.)

Arnold testified that Chadwick said he "cared nothing about the Jason and Edwin Clapp claim; considered *it* of no consequence." (Rec. 83, fol. 189.)

When we consider the character which Henry Clapp had established for himself in the little community in which he and Lot Chadwick had lived together for over twenty years, the professed object of these pretended loans of $6000 is significant.

In the Edwin Clapp case Mr. Chadwick testified (Rec. pp. 80–82);

"Consideration was mostly *money;* may have been some bonds. . . . . Don't know what he did with the money. With all the money I let him have I supposed he was going to buy some land, *or something of that kind.* I was not informed as to particulars. I *did not care* about the particulars. *I knew that if the money was not invested properly my daughter would let me know it.*

For the note given January 1, 1869, I can't say whether I gave all money or part bonds and part money. I took no security; *supposed the land would be purchased in the name of some reliable party;* [*i. e.* not in Clapp's name] *did not wish to know* when I delivered the money and bonds into Henry Clapp's hands. I may as well say that as anything. (Rec. 81.) . . . . . .

When the deed was made, I gave to Henry $1000 in Lee Co. bonds of $100 each. The bonds I gave him before were U. S. bonds—5–20s, I think. . . . I le- Clapp have the bonds at their face value, with accumut lated interest, *which was their market value.* (*Id.* 82.)

Henry Clapp, cross-examined in that case, swore, in reply to questions, thus;

Q. What use did you make of the bonds, given to you by Chadwick, *which formed a part of the $6000?*

Ans. *I had plenty of friends to call on me for help.* I consequently placed *those* bonds in the hands of my wife and told her to take care of them.

Q. Do you wish me to understand that *the money and the bonds which you said you received from Chadwick for the notes which you gave Chadwick*, which notes were surrendered to you by Chadwick at the time of the conveyance by you to him, was delivered by you to your wife?

Ans. YES, sir. Shortly after the notes were delivered to my wife the money and bonds that Chadwick gave me for the notes were given at Chadwick's house; don't know but my wife was present; *delivered the bonds to my wife but few hours after receiving them;* delivered them, I think, on the farm. I should not think I would let any one be present, seeing me with that amount of money. Don't know what she did with the money and bonds. I have seen all the money I wanted from my wife; have not seen any more than I called for. *Have seen none of the bonds.* Don't know, of my own knowledge, where the bonds now are. No other person than Chadwick and my wife saw me in possession of the money and notes. [bonds.] (Rec. 324–5.)

In his cross-examination in the cause at bar, this witness repeats the statement that all he received as consideration for the $6000 notes, as well as for his deed to Chadwick, whether bonds or money, immediately passed into his wife's hands, "and the subsequent proceedings" therewith "interested him no more." (Rec. 337 to 339.)

It appears, not only that Mr. Clapp had this implicit confidence in his wife, but that her father could trust her to see that no injurious investment of these funds was made by her confiding husband. (See *Supra*, p. 45).

Mr. Chadwick's supposition (*Supra*, p. 45) that the money lent to Henry would be invested in land in the name of some *reliable* person was erroneous. No land was bought. In all his peregrinations, after he left this farm (in 1873 or 1874), into Kansas, Nebraska and Iowa—"mostly up and down" nameless "creeks", at "Red Oak a while"; Beaver Creek; Sappy Creek; to Chicago; Mendota; Rock Island; Davenport; Monmouth; till he got back to Lee Centre—his search for

a resting-place, or an "investment" was as futile as that of Noah's dove, when first sent out of the ark. He either failed to find suitable land, or else a 'reliable' name in which to place the title. (Rec. 359 to 361.)

Nor would Henry Clapp or his wife use any of this $6000 to pay off the judgments and claims which compelled Mr. Chadwick to buy, "in order to save himself"! (Rec. 395 top.)

Prior to starting off upon these fruitless wanderings, Mr. Clapp continued to live on this farm (until the house was burned) precisely as he did before its 'sale' to Mr. Chadwick. (Rec. 331–2; 144; 75 fol. 173; 76 fol. 176.)

He had at first, he says, "a *verbal* lease." (*Id.* 332.)

It was only after the transaction was questioned, in the Edwin Clapp suit, that the formality of a written lease was adopted. (Rec. pp. 67, 71, 144, 332.)

Their answers to Edwin Clapp's bill *aver* that Henry *et ux.* continued to reside on place as agents of Chadwick "who desired to give his daughter a home" (fols. 173, 176, 76) instead of leaving them to provide one with the $10,000 received of Chadwick!

It was only after the house burned, in the fall of 1875, that they wandered out West, to return again to Lee Centre. (Rec. 144; 332 top; 358 bottom; 406 top; 418, 419.)

The Court will, if pertinent, judicially notice that, on the 20th of December, 1867, and January 1, 1869, the Government's 5–20 were at a premium; and that "the face and interest" was *not* "their market value." (Rec. 82, fol. 186; 1 Woolw. 217.)

In December, 1867, none of that class of public securities sold at below 104½; and they ranged to 112⅞. January 1st, 1869, with interest on, from 110 to 112.

It may well be, however, that one who would sell, without payment or security, to a drunken insolvent (Rec. 417, 418) *any* bonds, marketable at their face, would not be scrupulous to exact a premium.

Mrs. Henry Clapp, though produced and partially examined by the defendants, *chiefly in regard to conversations alleged to have taken place between the two defendants*, Ruggles and Henry, not in the presence of the complainant, did not explain her disposition of the property said to have been put in her hands by her husband, nor complete or sign her deposition, nor offer herself for further examination, nor for cross-examination. (Rec. 346.)

Therefore what she did state should properly find no place in this record.

This comment upon the testimony originally proposed to be elicited from Mrs. Clapp leads us to digress to a momentary notice of that of her brother, Charles W. Chadwick, taken by the defendants Oct. 28, 1883, and, by some clerical inadvertence in making up, placed in the first part of this transcript. (Rec. 63 to 66.)

The sole object of his deposition is to rehearse a conversation alleged to have taken place between the two co-defendants, Ruggles and Henry Clapp! *(Ib.)*

Beyond denial, these two Clapps had joined their efforts to effect a purchase of Mr. McLean's stock of goods by means of the mortgage in suit (Rec. 84, fol. 190); had soon thereafter, and before Mr. McLean had received one dollar, concurred in returning the Jason and Edwin deeds, with the statement that no use had been made of them, and this for the purpose of obtaining or retaining more money (Rec. 104, fol. 226); yet (not to recite any more of their joint and several rascalities) it is sought to bolster up this protracted resistance to the payment of the debt to Mr. McLean, out of the land pledged therefor, by introducing depositions of Mr. Chadwick's children to show alleged, *ex parte*, irrelevant conversations between these two scoundrel brothers!

M. L. Arnold testifies Henry Clapp told him he

(Hy.) owed Chadwick between $1000 and $1100. (Rec. 156 middle.)

Cephas Clapp testified to Henry coming to him to borrow $1000 or $1200 which (Hy. said) was all he owed Mr. Chadwick. (*Id.* 96 bottom.)

March 1, 1869, when the transfer to Chadwick was made, Henry Clapp had only one child (Fletcher D.) by his former wife living with him, then about a dozen years old. Fletcher swears (Apr. 17, 1883) he accompanied his father and step-mother over to her father's when they went there for the purposes of this conveyance. With the eager eyes of a boy and the proverbially long ears of a little pitcher, he saw and heard all that transpired; and, in his manhood, he recalls and recounts it. (Rec. 141 to 151.)

The substance of this witness' testimony is that Henry Clapp, just recovering from a spree, is by his wife stimulated (but not intoxicated) with wine, and cajoled by her persuasions, and Mr. Chadwick's fair promises, into a reluctant assent to this transfer of title, made for the avowed purpose of compelling a favorable compromise of this McLean mortgage, and after the claims against him were arranged Henry was to have the balance.

The money and bonds which, in Bodine's presence, were delivered by Chadwick to Clapp, Fletcher saw returned to Chadwick, immediately upon Esquire Bodine's departure. (P. 142, fol. 287.)

He also mentions various conversations between his parents and Lot Chadwick, establishing the latter's full knowledge of the status and validity of this McLean mortgage as well as the utter want of good faith and consideration for the conveyance to Chadwick. (Pp. 140; 146–7.)

Necessarily, Henry Clapp (Rec. 354) and Mr. Chadwick (*Id.* 390) deny the truth of Fletcher's story, and his presence there at all.

Mrs. Clapp does not. She is asked no question upon the subject. (*Id.* 343-6.)

Mr. Bodine noticed no wine; no intoxication; no Fletcher. (Rec. 348.) "I *think* he was not present." (*Id.* top.) But Mr. Bodine's next preceding answer was that others, besides the parties to the deed, might have casually come into the room. *(Ibid.)*

It should be noted that Fletcher's statement was, "They got some wine, and *then* they sent for the justice, *after* he had drank some," etc. (Rec. 142 top.) He did *not* say his father was intoxicated that morning. (*Id.* 143-4, Int. 36 and Ans.). Mr. Bodine's belief that Fletcher was not there is but a negative impression, opposed to a positive averment. (17 Wall. 384, 394.)

There was, however, one point—as to the nature of the consideration exhibited as passing—upon which Mr. Bodine directly, positively, and affirmatively corroborated Fletcher, in direct contradiction to the reiterated and detailed statements of the parties to the deed.

February 27, 1871, Lot Chadwick filed his answer to Edwin Clapp's cross-bill, giving a detailed statement (Rec. 470-1 and *supra*, p. 42) of the items of consideration for Henry Clapp's deed; by which statement they thereafter had to stand, and testified accordingly; except that, at the outset of his testimony, when called to the stand by his adversary in that suit (Rec. 78) he did say he gave Henry "something over $6000 in notes; *$2150 in money;*" the taxes, judgment, etc. (*Ib.* bottom; fol. 180.)

Upon cross-examination, he swore he gave $1,000 in ten *Lee Co.* bonds, and $1000 in Sherman-Shaw note. (*Id.* 82 top, fol. 186; 329 and 330; 388-9; 414.)

His answer to cross-question, at top of this page 414 is;—

Ans. I did not pay *any* money. That was a mistake.

If it is taken from the record it is a mistake, because I said always that I paid him $2150 in Sherman-Shaw's note and Lee Co. bonds. (P. 414 top.)

Fletcher D. Clapp swore to seeing *money* counted, passed over, and (after Bodine's departure) subsequently returned. (Rec. 142, fol. 287.)

Mr. Bodine (though not recalling Fletcher's being there) positively swore to seeing *money* passed as part of the professed consideration for this deed. (Rec. 348, 350 bottom, and 351.)

Though he had been ten times called as a witness in these matters, and spent 26 or 27 days thereon, (Rec. 295, fol. 506, bottom) he had never stated the transaction in any different manner, nor that the consideration was bonds, notes and securities. (Rec. 296 top.) This testimony was given May 18, 1886. (Rec. 299 top.)

In his deposition of July 17, 1883 (*Id.* 347 top) Mr. Bodine, then produced in behalf of the defendants, testified;—

I saw *money* paid—bonds, notes and receipts paid as consideration.

I saw Mr. Chadwick, the grantor herein, tender to Henry Clapp *money*, bonds, notes—and receipts, I think—and they were taken by him as payment for the land.

My impression was that they were *United States* bonds. I could not state the denomination. I don't recollect the amount [of bonds] now. (Rec. 348.)

Cross-examined (P. 350, cross-int. 20) he recollects that about $8000 were passed over to Henry, at that time, by Mr. Chadwick, in bonds, notes, *money* and receipts;—feels *sure* about that.

Ans. I looked over the papers and *money*, bonds, notes and receipts, and made an estimate of it at the time; could not say how much of each. *I recollect an item of $2000 in money.* I recollect a note against Sherman Shaw, Son & Co. of $1000 and interest. *My*

impression is there was $3000 in bonds. (Rec. 350 bottom.)

The very first question put to him on re-direct, by the counsel producing the witness, is ;—

Are you *certain* whether your recollection of there having been a payment of the $2,000 in *money* and *$3,000 additional in bonds* is correct? or may the money or bond payment altogether have amounted to *one or the other* of the two sums you have named?

Ans. I think *I have a distinct recollection of the $2,000 in money* and of the note ; but I am not *so* positive as to the *amout* of bonds. There *may* have been a less *amount* of bonds. (Rec. 351 middle.)

In his latest deposition, this witness says that, besides the Sherman-Shaw note, there were passed over other smaller notes which Henry had given other parties ; adding,

My impression is there was notes given to parties living in Franklin Grove, for farm machinery. (Rec. 295 middle.)

Henry Clapp once swore; "Albert Bodine was present when I received *money* AND bonds." (Rec. 88 bottom.)

This is not a mere difference of recollection as to unimportant details ; it goes to the destruction of the whole basis and theory of Mr. Chadwick's interposition ; viz., that it was to save $6,000 previously loaned Henry in money and United States bonds. (Rec. 395 top.)

This theory, as propounded, was sufficiently untenable, when coupled with the statements of the parties that the "loans," in whatever shape made—whether money or bonds—went immediately, in the same form, into Mrs. Clapp's hands, who could be relied upon not to allow her father to be injured by any acts of her husband ; (Rec. 81 top) but it is shown to be absolutely

false, if $2000 in money was counted out as part of this consideration.

By all accounts, the unindorsed Sherman-Shaw note (upon which about $1075 was due) was made to figure in this transaction; and Mr. Chadwick insists he delivered a like amount in Lee Co. bonds. The judgments, taxes and claims against Henry were simply assumed then, and paid afterwards. (Rec. 413 top.)

As stated by Mr. Chadwick, these, plus $11 for deed and stamp, aggregate $1512 (Rec. 412–3) which added to the $6035.43 of alleged loans to Clapp (*Id.* 401 middle) makes the total about $300 less than $10,000. This discrepancy is not what we wish to note;—but that $2,000 in *money* interpolated would upset their whole computation; regardless of $3000 (or any other amount) in *United States* bonds, and Clapp's notes to "others" than Chadwick—the Franklin Grove people *et als.* (Rec. 295 middle; 350, 351.)

This shows the exhibition and passing of a "consideration" was so purely formal and perfunctory that the parties to the performance could not themselves remember, a year or two afterward, what was used for this purpose.

Although Mr. Chadwick *expected litigation* when he bought in 1869 (Rec. 406 middle) yet in 1870 *he burned his books* containing his account with Henry Clapp! (*Id.* 421, fol. 765.)

We now return to our proposition that it is immaterial whether this transaction between Lot Chadwick was genuine or simulated, if, in addition to the statutory notice of record, they had actual knowledge, or the means of obtaining it, of the true status of this mortgage and the way Ruggles W. Clapp obtained the notes.

Incidentally to our discussion of Mr. Chadwick's version of his purchase, we have referred to the testi-

mony of Mr. C. and of M. L. Arnold, given in C.'s behalf, in the Edwin-Clapp suit (Rec. 83, fol. 188) put into the present record by the *defendants.* (*Id.* 67 top.)

This, especially coupled with Mr. C.'s own statement (Rec. 83, bot.), that "the conversation was about the McLean mortgage alone," is decisive. But fuller testimony was introduced into the present case. Egbert Shaw swears that the way in which Ruggles had tricked Mr. McLean out of these notes was "common talk" in that region, when the witness returned from the war in 1863. (Rec. 132.) The same witness testifies to having seen Mr. Arnold go directly to Mr. Chadwick's house, in winter or spring of 1867–8, from Egbert Shaw's, immediately after Mr. A. had told Egbert he was going to Chadwick's about this McLean mortgage. (Rec. 134.)

Fletcher D. Clapp's testimony on this subject (Rec. 139 to 141) has been already cited, though not reproduced here in full. If credit be given it at all, this one statement will suffice, viz. ;—

> I remember my father saying—he asked what the difference would be, as he said he had the notes, but the mortgage was still on—something to that effect—and *Mr. Chadwick told my father that if those notes were fraudulently got up, that it would make no difference; that the mortgage would hold the land.*" (Rec. 140 bottom.)

Mr. Arnold testifies to several conversations with Henry Clapp upon this subject; at whose request he (A.) went up to Mr. Chadwick's with the mortgage and abstract;—"Mr. Chadwick examined the McLean mortgage, compared it with the abstract, and told Henry he had better settle, and wished me to leave the abstract with him; that he wanted to use it in some suit." (Rec. 154, fol. 304.) He adds that he told Mr. Chadwick the notes they had (Curtis Cannon's etc.) were

all worthless, and we should rely upon the mortgage; that it had never been released. *(Id.)*

Ruggles W. Clapp's letter of May 15, 1863 (Rec. 306) to Mr. Arnold, recognizing Mr. McLean's right to repudiate the exchange of notes, first suggested the idea of applying the proceeds of Whiteside lands toward the satisfaction of this mortgage, and a compromise of any remaining balance.

Hy. Clapp's testimony is that Mr. Arnold was at their house about these Whiteside lands; in this agreeing with Mr. Arnold, who says he was trying to compromise. (Rec. 154 near top; 157; 346.)

Numerous witnesses were called, upon the one side to impeach, and upon the other to sustain, Mr. Arnold's character for truth. (Rec. 198 to 301; and 422 to 440.)

Most of those impeaching had been in litigation with him, or had some private grief, as they confessed; but it is not our purpose to consume a single page of space in the statement, analysis, or discussion of this testimony.

Be Mr. Arnold's character what it may, he was indubitably Mr. McLean's agent for the enforcement of this mortgage, with an interest in the monies accruing therefrom. While acting in this capacity, it is conceded he *did* go to Mr. Chadwick's house; where, Mr. Chadwick says "the conversation was about the McLean mortgage *alone*." (Rec. 83 bottom.)

Mr. Chadwick's answer to Edwin's cross-bill avers that he (Chadwick) was shown the abstract in Mr. Arnold's possession. (Rec. 74 fol. 171.)

We are willing to leave it to this court to determine whether or not Mr. Arnold is sustained by all the probabilities of human experience when, being there at all, or under such circumstances, he declares he went for the purpose of making his claim; and, this being concededly the sole topic of the interview, that he

maintained the mortgage to be a valid outstanding incumbrance, and the holding of the notes by Ruggles of no consequence, because obtained by fraud. (Rec. 154, fol. 304.)

The admissions of Mr. Chadwick's answer obviated the necessity for proof of certain of our allegations, and precluded any to the contrary.

Ex gr., our bill avers (Rec. p. 2 top) that, at the date of the mortgage, Ruggles W. Clapp was the owner in fee of the mortgaged and described premises.

Mr. Chadwick says he has no personal knowledge of our mortgage, [although his answer to Edwin's cross-bill, years before, set it up as made "for the benefit of said Henry," p. 465, fol. 880] but that it does appear of record in Lee County

"and further saith that, at the date of the making of said notes the legal title to the lands in said bill described was in the said Ruggles W. Clapp." (Rec. 9, fol. 19.)

Alleging his residence in a distant State, Mr. McLean avers that several years elapsed after the perpetration of the fraud in obtaining the surrender of the notes before he discovered it;

"That the said R. W. Clapp removed from the State of Illinois before the discovery of the fraud by your orator, and his whereabouts were unknown to your orator, but as soon as he discovered him, he repudiated the action of said Ives, and demanded his notes, which had been given up." (Rec. 5 fol. 9.)

To this Mr. Chadwick answers;—

"And, while respondent admits that the said *R. W. Clapp had removed from Illinois* many years ago, and, as respondent is informed, *about the year 1860*, he denies that the whereabouts of said Clapp was unknown to said complainant," etc. (Rec. 12, fol. 26.)

Thus the fact of Ruggles W. Clapp's absence from the State of Illinois from about 1860 is fully admitted.

Assignment of Errors.

The appellants herein assign for error,

I. The decree of the United States Circuit Court for the Northern District of Illinois in this cause from which this appeal is taken; which the appellants say is erroneous in that, (1) it finds the equities with the defendants; (2) orders the bill herein to be dismissed for want of equity; and (3) at complainant's cost; (4) awarding costs and execution therefor to the defendants. (Rec. 44, fol. 104.)

II. That the equities of this case are with the complainants, who are entitled to a decree thereon for relief and for costs.

III. That the appellants are and were, upon the pleadings and proofs, entitled to a decree of foreclosure of the mortgage mentioned in the bill, after a reference and accounting to determine the amount due thereon.

IV. That the decree of the Court below was based upon and controlled by evidence which is and was by law incompetent and inadmissible, and seasonably objected to by complainants upon that ground, and which ought not to have been considered by said Circuit Court; as is, at the pages and folios of the record where the same is printed, fully indicated.

POINTS.

The first and vital fact which lies at the foundation of our equity is not open to dispute; viz.: that, Dec. 4, 1855, Edwin W. McLean parted with $5918.66 of value (Rec. 1) relying wholly upon the mortgage in suit to secure payment of that sum, with stipulated interest, and never has been paid from this source, nor any other; and practically never could, nor can, obtain his money except through such proceedings as constitute the present action.

Not one dollar has ever accrued, or been taken, from the land described in our bill and mortgage toward the payment of the acknowledged debt to Mr. McLean. Yet this mortgage was confessedly made, given and used, with the concurrence and by the procurement of the equitable and legal owners of this land, for the single and avowed purpose of obtaining from Mr. McLean his stock of goods at the price above indicated. (Rec. 45; 84, fol. 190; 328 middle, and fol. 570. Also, see *supra*, pp. 3, 4.)

No stronger equity can be suggested than that our still unpaid claim shall be satisfied out of that very realty which was originally, and is still, pledged to its liquidation.

Certainly, the heavy burden rests upon the defendants, to show compulsive reasons why our debt should not be paid—and from the designated source.

I.

Statute of Limitations.

Although dated Dec. 4, 1855, the laws of Illinois applied to the undisputed facts, found in the foregoing statement, show that the mere efflux of time has not

deprived us of our right to a foreclosure of this mortgage.

At its October session, 1849, the Legislature of Illinois passed "An Act to amend the several laws concerning limitations of actions" which was approved Nov. 5, 1849. Its first section read;—

"SECTION 1. Be it enacted," etc "That all actions founded upon any promissory note, simple contract in writing, bond, judgment or other evidence of indebtedness in writing, made, caused or entered into after the passage of this act shall be commenced *within sixteen years* after the cause of action accrued, and not thereafter." (Laws of Ills., 16th Gen. Ass., Second Sess., p. 44 bottom.)

§ 3. . . This act, and the several acts to which this is an amendment, shall be subject to the several provisions, conditions and restrictions contained in the 12th and 13th Sections of the 66th Chapter of the Revised Statutes of this State. (*Id.*, p. 45.)

See also Gross' Stats. of Ills. (3d Ed. A. D. 1869) p. 430.

The thirteenth section of chap. 66 of the revision thus referred to provides:

"If any person or persons against whom there is or shall be any cause of action as is specified in the preceding sections of this chapter, except real or possessory actions, shall be out of this State at the time of such cause of action accruing, *or at any time during which suit might be sustained on such cause of action* then the person or persons who shall be entitled to such action shall be at liberty to bring the same against such person or persons after his, her or their return to this State, and *the time of such person's absence shall not be accounted or taken as part of the time limited by this chapter.*" (Gross, pp. 429, 430.)

The fourth section of this chapter of the revision concluded with a repetition of the language of the same-numbered section of the Act of 1827;—

"but if any payment shall have been made on any

such . . . promissory note, writing obligatory, . . . within or after said period of 16 years, then an action instituted on such . . . promissory note, writing obligatory . . . within 16 years after such payment shall be good and effectual in law, and not after." (Gross, 429 top.)

The seventh section of chapter 66 R. S. appointed that

"Every real, possessory, ancestral or mixed action, or writ of right, brought for the recovery of any lands, tenements or hereditaments, shall be brought within *twenty* years next after the right or title thereto, or cause of such action accrued and not after." *(Ibid.)*

The periods assigned for suits upon notes and to foreclose a mortgage were not reduced to ten years until July 1, 1872, after the present bill was filed. (Act of Apr. 4, 1872, §§ 11, 16. Pub. Laws of Ills. 1872–3, pp. 558–9.)

"§ 16 . . . . but if any payment, or new promise to pay shall have been made, in writing, on any bond, note, bill, lease, contract, or other written evidence of indebtedness, within or after the said period of ten years, then an action may be commenced thereon at any time within ten years after the time of such payment or promise to pay." (Pub. Laws of Ills., 1872–3, p. 559.)

The ten-years bar of the Act of 1872 did not apply to pre-existing contracts, whether a cause had then accrued upon them or not.

Means v. Harrison, 114 Ill. 248.
McMillan v. McCormick, 117 *Id.* 79, *83*.
Blackburn v. Weer, 21 Ill. Ap. 29.

I. Of a case in which "There is no evidence that a payment had been made, either on the principal or interest, or any promise or agreement to pay the same within sixteen years previous to the institution of this suit, nor any pretense that there had been an entry

by the mortgagee within that period," the Illinois Court observed;—

"The notes were barred by the statute at the expiration of sixteen years after their maturity. And the bar to the debt having become complete, plaintiffs in error had a right to interpose that bar to prevent a recovery in ejectment on that mortgage."

Pollock v. Maison, 41 Ills. 522 top.

Longest running note matured May 4/7, 1857. (Rec. 56 middle.) The preceding one Nov. 7, 1856. (*Ib.* bottom.)

Bill filed May 2, 1872. (Rec. 1.)

This would seem to be conclusive, as to the Statute of Limitations.

II. Only three years had elapsed after the full maturity of the debt when Ruggles W. Clapp left Illinois, and thereafter remained absent from that State. (Rec. 121–2; 477 top and 538 top.)

This fact Mr. Chadwick admits. (Rec. 12, fol. 26 and *supra*, p. 56.)

It is urged that the statute only permits the deduction of the time a debtor is absent from the State in actions brought for a recovery of the *note;* and, as no action was brought, the deduction of the time could not be made to uphold the sale under the mortgage. We are unable to perceive the force of the argument. . . .

If the statute has any effect to bar *the foreclosure* of a mortgage, or a sale under it, it must be applied in all its parts and provisions, *precisely as in* suits, or *actions to foreclose. Had a bill been filed to foreclose*, instead of the proceeding to sell, *and the Statute of Limitations had been relied upon, does any one suppose, in answer to the defense, the complainant would have been precluded from proving the absence of the mortgagor, to prevent a bar?*

Emory v. Keighan, 94 Ills. 546–7.
Chenot v. Lefevre, 3 Gilm. (8 Ill.) 637.
Valandingham v. Huston, 4 *Id.* (9 Ill.) 128.
Waterson v. Kirkwood, 17 Kans. 1, quoted post, p. 84, top.

It had long before been held in Illinois that an action to foreclose a mortgage was barred only when suit upon the note was.

Harris v. Mills, 28 Ills. 44, cited in
March v. Mayers, 85 *Id.* 177–8.
Emory v. Keighan, 88 *Id.* 482.
Locke v. Caldwell, 91 *Id.* 420 top.
Hughes v. Edwards, 9 Wheat. 497.

III. Irrespective of the debtor's absence from the State, not only a payment upon the debt but a promise to pay it, or any other form of acknowledgment of its continued existence as a valid claim, will take the case out of the Statute of Limitations, so far as a foreclosure of the mortgage is concerned, as to both the mortgagor and his grantee.

Lowery v. Gear, 32 Ills. 382.
Wooters v. King, 54 Ills. 343.
Ditch v. Vollhardt, 82 Ills. 124.
Kallenbach v. Dickinson, 100 *Id.* 427.
Blackburn v. Weer, 21 Ill. Ap. 37.
Bell v. Morrison, 1 Pet. 370.
Palmer v. Butler, 36 Ia. 581–2.

The grantee of the mortgagor is not a party to the payment of interest, and is not bound by any receipt given for such payment. He is, nevertheless, affected thereby, in so far as regards his defense under the Statute of Limitations. He is not a party to the judgment on the note—is not bound thereby as to the amount found due; still, his right to avail himself of the running of the Statute of Limitations is affected thereby. The reason plainly is, it is not the adjudication as such that arrests the Statute, but it is the *fact* that *the party owing the debt has done some act* by which the running of the Statute has been arrested, and by reason of which the Statute has not affected the debt.

In this case, had the defendant proved a payment upon the debt less than 16 years before the sale, this would have shown vitality in the mortgage, etc. * * *

Proof of *any* fact showing that the Statute of Limi-

tations had not run against the mortgage debt, defendant might avail himself.

Emory v. Keighan, 88 Ills. 489.

In his original answer (Rec. 11 bottom) Mr. Chadwick merely objected that the complainant had "slumbered upon his rights" to enforce the notes and mortgage for over fourteen years—which is less than the Statute of Limitations; but his answer to the bill of revivor contains this paragraph;—

"And this defendant avers that the causes of action, if any there be, arising to the complainants on account or by reason of the several allegations in their bill contained did not accrue within sixteen years before the filing of their said bill; and *this allegation this defendant makes in bar of said complainant's said bill*, and prays that he may have the same benefit therefrom as if he had formally pleaded the same." (Rec. p. 39 top.)

That is to say; he claims that the statute runs from the maturity of the note, May 7, 1857, to the filing of the bill of revivor Feb. 10, 1883—treating *that* as the institution of the proceedings to foreclose.

This claim is untenable.

The delay was a matter for the consideration of the Court below, in determining whether the order of dismissal should be vacated, and we be allowed to revive; but this was discretionary, and not a subject of appeal.

Being permitted (Rec. 35) the cause, when revived, related back to its origin. As the name indicates, it is *not* the institution of a new suit, no subpœna issues, but it is a *revival* and further prosecution of the old one, in the condition in which it was when it abated by the death of the original complainant—with all the rights he had. (Equity Rule LVI.)

Clarke v. Matthewson, 12 Pet. 171.
Valtier v. Hinde, 7 Pet. 252.
Florida v. Georgia, 17 How. 508-9.

No Court (that we can find) ever held the statute to apply, except where defendant had never appeared to the bill.

Norway, 1 Ben. 494.

"As the bill of revivor is but a continuance of the original suit, the residence of the parties at the time it was filed is altogether immaterial."

Whyte v. Gibbes, 20 How. 542.
Fitzpatrick v. Domingo, 14 F. R. 216.
Harrington v. Slade, 22 Barb. 162.

State laws or decisions do not affect the practice of Federal Courts. *(Ib.)*

"New defenses, *i. e.* defenses not made in an answer to the original bill, cannot be first set up in an answer to a bill of revivor. Such a bill puts in issue *nothing* but the character of the new party brought in.

Fretz v. Stover, 22 Wall. 198.
Bettes v. Dana, 2 Sumn. 383.

Even if we added the three years after May 7, 1857, that Ruggles W. Clapp was in the State to the period this suit lay dormant, by reason of complainant's death, that would not make up the statutory sixteen years; but no such course is permissible.

II.

Laches.

Our bill having been brought within the time prescribed (disregarding all exceptions) by the Statute of Limitations applicable to just such suits, instituted for this very purpose, there can be no question of laches;

and we refer to it only as put forth in the defendant's answer. (Rec. 11–12.) *The Norway, 1 Ben. 494.*

Unless the suit would have been barred had the action been at law, it cannot be stale.

Kane v. Herrington, 50 Ills. 238–9.
Richardson v. Gregory, 126 *Id.* 172–3.
Jackson v. Lynch, 129 *Id.* 84 'Third.'

Wherever the jurisdiction is concurrent, as in account, or (as here) where a suit at law may be based upon the principal debt, or a bill in equity upon the incidental mortgage which secures it, the Chancery Court acts *in obedience* to the Statute of Limitations, rather than by analogy to it. 2 Story Eq. Jur. § 1250 and cases *passim.*

Wagner v. Baird, 7 Howd. 258.
Carroll v. Green, 92 U. S. 516.

In a suit like ours, the Illinois Court observed ;

"There could not well be any presumption, from the lapse of time, of the payment of the debt, under the circumstances, so long as the time of limitation provided by the statute for the case had not run against the debt. Nor do we think the defense should prevail under the doctrine laid down in 2 Story Eq. Jur. § 1250. (quoted.)

As accounting for not sooner foreclosing was *the removal of the mortgagor from the State* and, so far as appearances showed [see Ruggles W. Clapp's letters; Rec. pp. 306-7, Exs. 11 and 12] the entire abandonment by *him* of the equity of redemption.

Locke v. Caldwell, 91 Ill. 521–2.

As already noticed (*supra*, p. 63), the defendant's answer sets up laches, but not the *statutory* limitation. The paragraph reads;—

" And respondent claims and insists that *if* any equitable right had ever existed in the said complainant *to enforce the said mortgage* or the *payment of said three notes*, or any of them, or of any part of the indebtedness

therein named, that he has slumbered upon his rights for a great period of time, to wit, for more than fourteen years prior to the time of the filing of his said bill, and that he has lost any *such* rights by his laches and delay; and that, by such laches and delay he has lost all right to ask the interference of a court of equity in this behalf, and that he is by law not now entitled to ask for or to receive such aid; and respondent claims and insists upon such *equitable* bar and limitation against any claim by the said complainant for equitable relief in the premises." (Rec. 11-12.)

The unsworn answer then goes on to deny Mr. McLean's statement in the bill (subsequently fully sustained by the testimony) that it was not till 1861, (after Ruggles W. Clapp had left Illinois) he discovered the fraudulent character of the paper foisted upon him, whereupon he rescinded the exchange, and relied upon his mortgage. (Rec. 5 and 12.)

Lot Chadwick acquired his title March 1/3, 1869 (Rec. 408, cr. int. 67, and 413, cross-int. 128) with admitted knowledge of the state of the record, and (according to the testimony) with sufficient information of the existence, nature and circumstances of our claim.

Our bill was filed May 2, 1872. (Rec. 1.)

Certainly, this was reasonable, if time had not run against us before then.

Henry Clapp never had any title till January 10, 1868 (Rec. 506); that was the first day upon which *he* would have been a necessary or proper party to any suit to foreclose this mortgage.

The first—indeed, the only—question which could be raised (even if any delay shorter than the statutory limitation could be deemed negligent) is as to laches in foreclosing as against RUGGLES W. CLAPP.

That he was out of Illinois (where the land lay) and wandering hither and yon, in "parts unknown" (Rec. 48; 50, fol. 120; 51 top; 122-2; 125; 329 top; 363 bottom) is, in law, a fact that stops the running of the

Statute of Limitations; hence, in equity—even in those cases to which the statute does not directly apply—it should be equally considered.

There was no occasion to bring any bill against Ruggles for a rescission of the exchange. Mr. McLean instructed Mr. Arnold (Rec. 151 bottom) to notify Ruggles of the repudiation of the transaction; and A. did so, as soon as he ascertained R.'s whereabouts, to which Ruggles replied in May and June, 1863 (Rec. 306, Exs. 11 and 12) assenting thereto, so *no bill to rescind became necessary or proper.*

A decree in such a suit could give *us* nothing stronger or more, in law, than his assent did; nor in fact, unless his body was found within the jurisdiction to compel obedience to an order for actual return of the overdue notes to us. Our legal right to enforce payment is just as strong, after the rescission, without these pieces of paper as with them.

Mr. Chadwick's answer sets up that the complainant "by his own acts put it out of his power to restore the said Clapp to the position which he occupied before said exchange was made." (Rec. 12 bottom.)

That is no defense as to *Chadwick;* and R. W. Clapp never made it, but let the bill go unanswered by him.

Nor is it a defense as to anybody; since the retention of the property, and the realization out of it of all that could be obtained, to apply upon this debt, was at Ruggles W. Clapp's own request and direction. (Rec. 306, Exs. 11 and 12.) It enured to the benefit of the owner of the fee by diminishing the incumbrance so much; but nobody else can complain of Ruggles for doing it, or claim any further benefit than the diminution of the debt.

These payments, however, and the arrangements out

of which they arose, are themselves acts which cut off all pretense of laches.

The sale of the Craig land by Arnold was authorized by Ruggles June 20, 1863 (Rec. 306 Ex. 12) and was made soon after, although the final payment and delivery of the deed did not take place until March 12, 1868. (Rec. 153, 193.) Our bill filed May 2, 1872. (Rec. 1.)

Certainly, in view of the request in Ruggles' letter of June 20, 1863, and of his suggestion of Whiteside-County lands, etc., it was *not* laches to postpone foreclosure proceedings (to which he would, prior to January 10, 1868, have been the sole defendant) until the amount to be realized from the Craig lands was definitely determined.

Even if Mr. McLean, or his agent, had any notice of Henry Clapp's equitable interest in the mortgaged land, yet Ruggles represented that interest, and his action with relation thereto would bind Henry.

Nothing could be laches as to Henry Clapp which was not so as to Ruggles. Henry knew all the facts, was a co-conspirator, cognizant of and participant in Ruggles' fraud, and evidently knew of Ruggles' directions to Mr. Arnold.

This is manifest, *inter alia*, by the admitted fact that they allowed Mr. Arnold to search for and take away the deeds to the Whiteside County lands which R. W. C. proposed to have sold to reduce the debt secured by this mortgage. (Rec. 153–4; 155; 157; 306, fol. 524; 346.)

LACHES is not an abstract question of law.

It depends upon circumstances; and upon persons, in their connection with and relation to these circumstances.

If there was no laches as to Ruggles W. Clapp, or Henry Clapp, there was none as to LOT CHADWICK.

Boone vs. Clark, 129 Ill. 482.

He must stand or fall by the title he acquired. *(Ib.)* Only three years intervened between the deed to him and the filing of our bill.

Up to the time (March 1/3, 1869) when he took title there was no holding thereof *adverse* to us; nor did the mere acquisition of it by him necessarily make his holding adverse to us.

Previously, the title had been in the original mortgagor, except that, for a single year, it was held under a *quit-claim* deed (Rec. 506) from Ruggles to Henry, for whose benefit the mortgage was executed. (see *supra.*)

That a mere conveyance of *the equity* does not create a hostile possession is plain.

Wiltsie, Mort. Forcl. 63, § 58.
Higginson v. Mein, 4 Cr. *419 bot.
Un. Bk. v. Stafford, 12 Howd. 327.
N. O. v. Same, *Id.* 343.
Hardin v. Boyd, 113 U. S. 756.
Smith v. Wolfolk, 115 *Id.* 143, 150.

Such is (of course) the law of Illinois.

Brown v. Devine, 61 Ills. 260.
Medley v. Elliott, 62 *Id.* 535.
Rockwell v. Servant, 63 *Id.* 424.

In 62 Ills, at p. 535, the Court observe;—

"The grantees of the mortgagor were never treated as trespassers, nor their possession as hostile to, or inconsistent with, the right of the mortgagee. . .

The relation of mortgagor and mortgagee; the fact that *the purchaser only succeeded to the right of the former*, and WITH NOTICE *of the encumbrance*, and the consequent priority between the parties, forbid the conclusion of an adverse possession. *The possession must be regarded as in subordination to the mortgage;* and it cannot cease to be of that character until there is an open disclaimer of holding under it, and the assertion of a distinct title, *with the knowledge of the mortgagee.*

Medley v. Elliott, 62 Ills. 535,
Citing 61 Ills. 260 and
*Zeller v. Eckert, 4 How. *289, *296.*

Mr. Chadwick's accepting, and placing upon record, the deed from him to Henry Clapp were, of themselves, no notice to us of any adverse claim.

Hosmer v. Campbell, 98 Ill. 572.
Miller v. Larned, 103 *Id.* 563.
Heaton v. Prather, 84 *Id.* 330.
Grether v. Clark, 75 Ia. 383.
Wright v. Eaves, 5 Rich. Eq. 81.
Norton v. Lewis, 3 So. Car. 25.
Lynch v. Hancock, 14 Id. 66.

There is no presumption of payment, to bar an equitable foreclosure, short of the Statute of Limitations.

Boon v. Pierpont, 28 N. J. Eq. 7.

III.

Notice.

From the foregoing quotation and citations, it will be observed that notice to a purchaser of the existence of the mortgage, and failure *on his part* to affirmatively notify the mortgagee of a design to hold adversely thereto, will preclude any claim of adverse possession;—and, therefore, necessarily, of laches in the assertion of a lien which nobody thus controverts.

We will consider the nature and effect of the *record* notice, which Mr. Chadwick admits he had; of the *actual* notice to him, as testified to; of those further facts and circumstances which should have attracted his attention, and led to careful inquiry; and then scrutinize his conduct in and with relation to the transaction; the proper inference to be drawn therefrom; and the legal significance or insignificance of the single

fact upon which he says he solely relied, *i. e.* the possession of the original mortgage-notes by the maker.

We will premise this examination by a repetition of our observation (*supra*, p. 56) that the bill and answer give us this starting-point therefor—that Ruggles W. Clapp, when he gave this mortgage, had legal title in fee to the mortgaged property. (Rec. 2 top; and 9, fol. 19.)

The evidence abundantly substantiates this. The law of Illinois makes the "*filing* for record" sufficient to protect those who accept conveyance with knowledge of, and relying upon, such filing.

Cook v. Hall, 1 Gilm. 575.
Merrick v. Wallace, 19 Ills. 486.
Nottinger v. Ware, 41 *Id.* 245.

Messrs. McLean and Chadwick both rest their respective interests upon the so-acquired title of Ruggles W. Clapp, and could not deny it *inter sese*; and did not undertake to (but the reverse) in the present litigation.

Snapp v. Pierce, 24 Ill. 157.

I. It is not the *constructive* notice which the formality of recording creates which we are considering; but *actual* knowledge that our mortgage was duly recorded, and was *not* released of record.

The method in which that fact was early (perhaps not first) months before he took title, called to his attention is significant, and is undisputed. (*Supra*, pp. 38, 39, 41, 49, 54, and Rec. pp. 83; 154, fol. 304; 390 bottom; 391).

Upon this last-mentioned page (391) Mr. Chadwick states:

"Ans. As to *myself* with regard to what *I* said, if I remember right, was *with reference to that abstract.* . . I presume I made some inquiry; perhaps saw the ab-

stract. Mr. Arnold allowed them to copy the abstract, as I understood it." (Fols. 705–6.)

He read the copy made by his daughter, Mrs. Clapp. (Fol. 706.)

That abstract, signed by the Recorder per his deputy, is found upon page 317; and below the certificate of clear title to this land was the statement of the filing in his office of the two deeds from Jason and Edwin Clapp.

The Illinois Revised Statutes of 1845, p. 432, § 7, declared that

"On the filing of any instrument in writing for record in a Recorder's office, the Recorder *shall*, when requested, give to the person leaving the same to be recorded a receipt therefor."

"All deeds, mortgages, and other instruments of writing which are authorized to be recorded shall take effect and be in force from and after the time of *filing* the same for record, and not before, as to all creditors and subsequent purchasers." . .

Ill. R. S. of 1845, p. 108, § 23.

So this receipt, at the foot of the abstract was official, under legislative requirement.

The way in which it comes to Mr. Chadwick's attention is significant. It is not found among *Ruggles'* papers, but is in the custody of Mr. McLean's agent, acting with relation to the mortgage. (Rec. 83, bottom, where Mr. Chadwick says the conversation was about that alone.)

This abstract could be of no value to Mr. Arnold for any other purpose than that of fixing the lien of the mortgage upon the realty described therein. It would have not the slightest bearing with relation to securing the draft by Whiteside Co. land—which Henry Clapp foolishly says was the topic of conversation!

Why should Mrs. Clapp copy the abstract on *that* account? or Mr. Arnold take it there?

Accepting this abstract as correct to Dec. 4, 1855, Mr. Chadwick himself went to the recording office and had the search of title brought down to the time of the conveyance to him; doing this with a view to "go back on the proceedings" if found advisable. (Rec. 408; 413, fol. 749, and *supra*, p. 41 bot.)

So, it is not the mere technicality of the legal inference of notice from the filing of the mortgage that we rely upon, but the amplest actual knowledge of the title as it stood upon the county records, which import verity in this matter to whoever has occasion to resort to them.

White v. Kirby, 42 Ill. 510.
Buchanan v. Bk, 78 *Id.* 500.
Shannon v. Hall, 72 *Id.* 354.
Hall v. Shannon, 85 *Id.* 473.

The effect of the record was that Chadwick could obtain no better title than that which Ruggles W. Clapp had when he conveyed to Henry, and which the latter transferred to Lot Chadwick.

Buchanan v. Bk., 78 Ill. 500.
Boone v. Clark, 129 *Id.* 482.

"It may be asserted as a general proposition, where a person does an act which the law requires him to do, and in the manner prescribed, he has performed his whole duty, and is entitled to the benefit of its performance. The rights of Ready, the mortgagee, had become fixed by the record of his mortgage, which was *notice* for ALL TIME. Accident, no matter how disastrous, could not deprive him of these rights, nor affect them injuriously. What is the object of recording a a deed of mortgage, or any other deed? One object certainly, is the security of the grantee, for thereby he is protected against subsequent sale by his grantor, and we know of no principle of law or rule of equity which can deprive, or should deprive him of this security."

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Mr. Chadwick's information as to our claim was such that he would have been bound to hold in subordination to it, had he not consulted the county records.

Whether *details* of conversations are correctly stated by our witnesses—Mr. Arnold (pp. 83; 154, fol. 304) and Fletcher D. Clapp (pp. 139 to 141)—or not, the substantial fact, stated by Mr. Chadwick himself, is that Mr. Arnold was there with the abstract *before* Mr. Chadwick purchased; it was copied, and *some* talk was had, which Mr. C. thought was "about the McLean mortgage alone" (Rec. 83 bottom.) Whether he distinctly heard and understood all that was said or not, he discloses that *the effect of the surrender of the notes* was discussed. *(Ibid.)*

Mr. Chadwick knew Ruggles W. Clapp had the title to keep the land from Henry's creditors (Rec. 73, fol. 176 and 417, fol. 757); that the Jason and Edwin Clapp deeds had been purloined from the registry and mutilated (Rec. 391) and was curious—*months before* (he says) *he thought of purchasing*—to know if they were included in this abstract, of which a copy was taken *(Ibid.)*; that this mortgage was given to secure a stock of goods for *Henry's* benefit (Rec. 73, fol. 170); that there was no pretext that Henry—who owed the debt, and equitably only owned the land subject to it,—*had ever paid a solitary dollar towards its satisfaction;* (Rec. 328, fol. 570), that the notes only were among Ruggles' papers, and no release or surrender of the mortgage; and he knew the character of these Clapps, even if he alone of those living in that village had failed to hear, long before, just how this swindle was perpetrated. (Rec. 132.) He knew Arnold represented this mortgage. (Rec. 83.)

All these were circumstances to put him upon inquiry—*which he never made.*

Rupert v. Mack, 15 Ill. 540.
Morrison v. Kelly, 22 *Id.* 610.
Chicago v. Kennedy, 70 *Id.* 350.
Shepardson v. Stevens, 71 Id. 646.
Bent v. Coleman, 89 *Id.* 364.

The record alone put him on inquiry, regardless of other circumstances.

Boxheimer v. Gunn, 24 Mich. 377.

Bringing a bill to determine the validity of the Edwin-Clapp lien, *he never even wrote to Mr. McLean to ask for release* of a *record*-incumbrance, on the face of it not barred, upon this property!

Had he believed the notes *paid*, he would have written for a release; that he did not do this, shows he fully understood all the *facts* of the case.

He made no inquiry of Arnold either.

Even if ignorant, he was willfully so, and is bound by that state of things which he would have ascertained by inquiry. (See cases just cited.)

Kennedy v. Greene, 3 Myl. & K. 722.
Cordova v. Hood, 17 Wall. 1.
Hazard v. Griswold, 21 F. R. 180 bot.

The deed, Hy. Clapp to Chadwick, was given in March, 1869. (Rec. 508, fol. 983.)

Sept. 14, 1869, the latter filed his bill against Edwin Clapp. (Rec. 67.)

His testimony in 1872, in this suit contrasts strangely with some of his statements made in this cause at bar, when he was approaching his ninety-first year. (Rec. 387-8.)

Then (in 1872) he said when Mr. Arnold was at his house "the conversation was *about the McLean mortgage alone.*" (Rec. 83.) In his deposition in the present cause he says, speaking of this same occasion;—"I did not hear *anything* said in regard to the mortgage." (Rec. 392 Int. 38.)

Replying to the next question, he denies aught was said about the notes being fraudulently given up (*sic* Rec. 392, fol. 708) and adds;—

"If I had given my opinion about it at that time, I should have said the notes having been given up, the conditions of the mortgage had been complied with,

and *therefore the instrument was null and void. That* WAS *my opinion of it*, and is at the present time." (Rec. 392, fol. 708.)

This (if true) shows the state of his mind when he bought; that, however much fraud induced the return of the notes to the maker, their surrender *ipso facto* extinguished the mortgage, irrespective of the method employed in obtaining them. He cared nothing for the *facts*, because he relied upon an erroneous assumption of *law*.

As already remarked, his earlier testimony shows the effect of the surrender of the notes (however procured) was discussed, and Mr. Chadwick did then express the same legal opinion. (Rec. 83 bottom.)

It shows the idea with which he went into this transaction; that if these evidences of the debt were, no matter how wrongfully, obtained from the payee, the mortgage would be extinct; that this was given to secure these scraps of paper, and not the *debt* which they represented.

In truth, the retention, exchange, or substitution of notes is of no effect upon the mortgage, if the *debt* remains unpaid. *That* is the principal thing to which the mortgage is subsidiary and collateral. That he was shown the notes did not at all authorize Mr. Chadwick to believe the mortgage extinguished.

Darst v. Bates, 51 Ill., 439.
Austin v. Underwood, 37 *Id.* 438.
Darst v. Bates, 95 *Id.* 493.
Kimble v. Esworthy, 6 Bradw. 517.

His erroneous legal theory explains Mr. Chadwick's acceptance of the deed without investigation.

That such a man, as Ruggles W. Clapp was known to him to be, had the notes *without* any release of the mortgage was a circumstance that should lead him to inquire of the mortgagee, or his representative, how it happened; to excite his suspicion of some trickery

upon the part of Ruggles, even if Mr. C.'s ears had theretofore been closed to what the neighbors had been telling about this transaction.

Circumstantial notice of an *unrecorded* lien may be repelled by proof of explanatory circumstances. Chadwick v. Clapp, 69 Ill. 119. But here there is *record* notice and *no* explanation, except the possession of the original notes, and an erroneous opinion as to the legal effect of this fact. As a mortgage-lien may be relinquished without payment of the debt (55 Wis. 611) so there may be not merely a renewal of notes, but *a substitution of those of a third person*, without discharge of the mortgage.

Foster v. Paine, 63 Iowa, 85.
Sloan v. Rice, 41 *Id.* 466–7.
Heively v. Matteson, 54 *Id.* 510, 511,

citing sixteen cases from several States.

Boxheimer v. Gunn, 24 Mich. 372.
Davis v. Maynard, 9 Mass. 242.

IV.

Mala Fides.

That Mr. Chadwick bought with notice of, and made allowance for (69 Ill. 126–7) our mortgage, and then tries to evade its payment, is itself evidence of bad faith;—but the circumstances attending the purchase, mentioned at length in our Statement of the case (*supra*, pp. 40 to 48) are in *law* badges of fraud and of lack of that good faith requisite to constitute an innocent purchaser, and require satisfactory explanations.

The relationship of the parties, when coupled with the other matters to which these persons testify, is sus-

picious. Mr. Chadwick turned over securities (he says) which were at once handed over to his daughter, in whom he had all confidence. She was *the* important personage of the transaction.

Hoxie v. Price, 31 Wis. 86.
Seitz v. Mitchell, 94 U. S. 580.

"Where such a contract is made *between father-in-law and son-in-law*, these suspicious appearances acquire increased strength, and demand a full and satisfactory explanation, showing the transaction is *bona fide*."

Borland v. Walker, 7 Ala. 274 bot.
Bell v. Devore, 96 Ill. 217.
Ryan v. Mullinix, 45 Ia. 634 top.
Mead v. Noyes, 44 Ct. 491 bot.
Engraham v. Pate, 51 Ga. 538.
Hawkins v. Allston, 4 Ired. Eq. 146–7.
Brady v. Briscoe, 2 J. J. M. 212–3.

The transaction was with an insolvent and is entered into *because* of that insolvency. (Rec. 389, 395, 417; also *supra*, p. 40 bot.)

Hudgkins v. Kemp, 20 How. 45.
Seitz v. Mitchell, 94 U. S. 580.
N. Y. v. Kyle, 5 Bosw. 587.

Henry Clapp retained posession as before, under a "verbal lease" until litigation had ensued. (*Supra*, p. 47.)

"The vendor appears to the world still to be the owner; he *lives in the same house*, and he appears to the neighbors to be exercising the same acts of ownership over the place as before the sale, and still appearing to *derive his support from the plantation*, as its proprietor.

Borland v. Walker, 7 Ala. 277.
See also page 278 middle.
Dick v. Grissom, 1 Freem. Ch. 435, § 2.
State v. Bethune, 8 Ired. L. 144–5.
Poague v. Boyce, 6 J. J. M. 70.
Rothgerber v. Gough, 52 Ill. 436.
Hussman, 2 Nat. By. Reg. 445.

"It is admitted that J. H. W. continued to occupy the house in which he resided when the contract was made; because defendant had no use for the house, and *because Mrs. W. was his daughter.*"

Bk. v. Walker, 7 Ala. 934, 948.

Compare Record, pp. 75 (fol. 173) and 397–8.

The exaggeration of a debt is as direct a fraud as the false pretense of one. (*Supra*, pp. 42, 49, top.)

Hawkins v. Alston, 4 Ired. Eq. 145.
Hartshorn v. Eames, 31 Me. 93.

Unless Mr. Chadwick bought subject to this mortgage, there was a gross *inadequacy of price*; land worth $20,000 (Rec. 122 top; 135 top) for $10,000. His own explanation, accepted by the Illinois Court, in the Edwin Clapp case, was that there was a deduction on account of this mortgage. (69 Ill. 126–7.)

He has Mr. Bodine attend, count the consideration, etc., while he now admits this was *not* the consummation of the transaction. (*Supra*, pp. 41, 44, 51 to 54.) In answer to Int. 24, put by his own counsel, he says;

"Ans. I passed the bonds and notes into Esquire Bodine's hands to count them, and let him see them, *so as to identify them, if necessary.* I then took them and passed them into Mr. Clapp's hands." (Rec. 390, fol. 704.)

The bonds and notes did not remain there, however, but passed immediately into the hands of Mr. Chadwick's daughter. (*Supra*, pp. 43, 44, 46.)

And Mr. Bodine swears they had him count *money*, while they swear money formed no part of the consideration. (*Supra*, pp. 45, 46, 50 to 52.)

"It is an easy matter for the parties to go through the form of paying money in the presence of witnesses. This is a *common device* of parties contemplating a fraud,

but endeavoring to fortify themselves with the evidence of good faith."

Hussman, 2 N. Bky. Reg. 445 top.
Bell v. Devore, 96 Ill. 223.
Mead v. Noyes, 44 Ct. 491 bot.

Fraud in a conveyance is necessarily established by circumstances.

Castle v. Bullard, 23 How. 187.
Wager v. Hall, 16 Wall. 601-2.
Sherman v. Hoagland, 73 Ind. 476 top.

In this last cited case the Court held this statement of some of these circumstances to be correct, though somewhat awkwardly expressed and obscure;

"But the proof is seldom direct proof, but usually consists of a chain of circumstances that indicate and usually accompany fraud. They are, *first*, that the parties sustain confidential relations to each other; *second*, concealment of the fact of the transfer [see this Record, p. 350, middle, E. B. S.] of title; *third*, the vendor being at the time heavily indebted and pressed for the payment, by suit or otherwise; *fourth*, the existence of a recent prior contract whereby the grantor is made to appear to be under obligation to make the transfer; *fifth*, the want of other property or means of the debtor sufficient to pay his debts." (73 Ind. 476 top.)

It will be observed that there is no single item of this enumeration wanting in this case.

We believe, therefore, Lot Chadwick's complicity in the frauds of Ruggles and Henry Clapp to be a fact fully established;—while, as matter of law, we deem it wholly immaterial to the issue between us.

The knowledge he admits he had—or the bare record-notice itself—makes all else irrelevant.

V.

Equity of the Bill.

The Court below, upon the pleadings and proofs, found the equities with the defendants, and dismissed the bill "for want of equity." (Rec. 44.)

We consider the undisputed *fact* that our debt—contracted wholly upon the faith of the security afforded us by this mortgage of this land—has never been paid, from this source or any other, constitutes the highest equity in us to have payment enforced out of the property originally and still pledged thereto; which is, in fact as in equity "the primary fund" for this purpose. Clift v. White, 12 N. Y. 534 top.

Ruggles W. Clapp could not contest our claim to foreclose; hence, Lot Chadwick cannot. He takes no better right than Ruggles had to transfer, through Henry to him. As we have shown (*supra*, pp. 56, 59, 61) Ruggles Clapp's absence from the State; his payments (*Sup.*, pp. 11, 13, 61); his rescissions (*Sup.*, pp. 10 to 12); his acknowledgments (*Ibid.*) operate against his transferees. 2 Jones on Mort., § 1202.

Wiltsie, Mort. Forcl. (2d ed.) 490 bot. § 410.

Lot Chadwick's answer *denies*

"that the said complainant has, until the filing of said bill, taken any steps whatever to have said exchange of papers set aside, but has, on the contrary, by his own acts, put it out of his power to restore the said Clapp to the position which he occupied before the exchange was made." (Rec. 12, bottom.)

This denial is untrue in fact (Rec. pp. 48 top; 153 top; 306-7) if material in law.

We deem it neither true nor material; to be immaterial, because Mr. Chadwick stands in Ruggles' shoes, or "sits in his seat" (as a leading case expresses it.) If

Ruggles' absence permitted or excused delay as to him, it also excused it as to Lot Chadwick. (17 Kans. 1, 14; 18 *Id.* 104.)

So, if Ruggles W. Clapp agreed to a rescission, without suit, and asked to have the land disposed of by his grantee, instead of being reconveyed to him, Lot Chadwick is certainly bound by this assent and request (56 Ia. 415) even if it lay in his mouth to utter an objection which Ruggles W. Clapp did not make.

But it is insisted that, although these acknowledgments may be sufficient to deprive the *mortgagor* of a right to set up the presumption of payment or release, they cannot affect *the other defendants*, who purchased from him parts of the mortgaged premises, for a valuable consideration. The conclusive answer to this argument is, that they were purchasers, with notice of this incumbrance. It must be admitted that it was but constructive notice; but for every purpose essential to the protection of the mortgagee against the effect of those alienations, it is equivalent to a direct notice, and such is unquestionaby the design of the registration laws of Kentucky. *A purchaser, with notice, can be in no better situation than the person from whom he derives his title*, and is *bound by the same equity* which would affect his rights. The mortgagor, after forfeiture, has no title at law, and none in equity, but to redeem upon the terms of paying the debt and interest. His conveyance to a purchaser with notice, passes nothing but an equity of redemption, and the latter can, no more than the mortgagor, assert that equity against the mortgagee, without paying the debt, or showing that it has been paid or released, or that there are circumstances in the case sufficient to warrant the presumption of those facts, or one of them.

Hughes v. Edwards, 9 Wheat. 498, 499.

Citing only this case, as all-sufficient, WALWORTH, CH., observed;—

"The defendants, therefore, claiming through the conveyance from Van Dyke to Shaver, *sit in the seat of the grantor* in that conveyance, and *are bound by his recog-*

nition of the mortgage as a subsisting incumbrance upon the premises within twenty years."

Heyer v. Pruyn, 7 Paige, 459.
Also in 34 Am. Dec. 355.
N. Y. v. Covert, 3 Ab. Ap. Dec. 350.
Barrett v. Prentiss, 57 Vt. 297.
Dick v. Balch, 8 Pet. 30.

The courts of Illinois (and of almost every other State, with the possible exception of California) have enunciated the same principle.

Boone v. Clark, 129 Ill. 482.

"The relation of mortgagor and mortgagee; the fact that *the purchaser only succeeded to the rights of the former*, and with notice of the incumbrance, and the consequent priority between the parties, forbid the conclusion of an adverse possession."

Medley v. Elliott, 62 Ill. 535,
quoted *supra*, p. 69, bot.
Emory v. Keighan, 88 *Id.* 489,
quoted *supra*, pp. 62, 63.

The record of the mortgage put Chadwick in the same position as the mortgagor.

Boxheimer v. Gunn, 24 Mich. 377.

The mortgagor's admissions or payments, while holding the equity, like his absence from the State, prevent the statute from running in favor of his grantee, *because* the latter only represents the former.

Hence, in a case where much more than the statutory period had run since the mortgage debt matured, it was held the mortgagor's absence from the State prevented the bar of foreclosure proceedings against his grantee of the equity.

Waterson v. Kirkwood, 17 Kans. 1.
Smucker v. Seibert, 18 *Id.* 104.
Kerndt v. Porterfield, 56 Ia. 415.
Emory v. Keighan, 94 Ill. 546-7,
quoted *supra*, p. 61, bot.

"Waterman and Edwards have merely succeeded to the rights of Pearsall. They stand in his shoes. *They have got just what he would have*, if he had not transferred his interest in the land to them. *They have nothing more than he had* at any time the right to transfer to them. The stream has not risen, and cannot rise, higher than the fountain, etc., etc."

Waterson v. Kirkwood, 17 Kans. 14.

The Iowa Court applied this doctrine where the mortgagor's new promise was *after* his transfer of the equity.

"When his interest was acquired, he took it subject to the mortgage, with the knowledge that the debt would be revived by a new promise, and the mortgage lien would stand so long as the debt existed. When the mortgage is foreclosed under a new promise, removing the bar of the statute, he is in no different condition than when he acquired his interest."

Kerndt v. Porterfield, 56 Ia. 415,
citing 17 Kans. 1.
Eyre v. Burmeister, 10 Ho. Lds. Cas. 91.

Had Ruggles W. Clapp retained title, and this suit been against him, as the sole defendant, would *he* have had any defense thereto? If not, his grantee has none; for none has accrued *since* the conveyance to Chadwick; and to pre-existing facts Chadwick stands related precisely as Ruggles W. Clapp did.

Suppose the action to foreclose instituted against Ruggles: that he answers stating either the whole facts, or that the notes have been surrendered to him in exchange for others; could we not show the fraud whereby that exchange was procured? Could we not prove the rescission, assented to by him? That he was out of Illinois, so suit could not be brought against him? That the exchanged land had been sold by *his* directions, and the proceeds applied to the mortgage, as he directed?

No other than an affirmative answer seems possible, and his grantees must stand or fall by his position.

He could not plead his own fraud against us.

"A chancellor will not permit a party to plead his own fraud, to defeat the equity of the complainant."

Un. Bk. v. Stafford, 12 How. 341.

Neither can the assignees of his status. They are entitled to no benefit or usufruct of his fraud. Mere transfer of his title, through Henry, to Lot Chadwick, and the lapse of three years thereafter, are no purgation of this fraud; and entitle them to no "unearned increment" from it.

Such, being the dictate of justice and common sense, is the tenor of all the decisions.

In Massachusetts and New Jersey, cases arose similar to this. The courts said they would see a party protected who had surrendered both note and mortgage in exchange for worthless paper.

Grimes v. Kimball, 85 Mass. 518.
Stover v. Wood, 26 N. J. Eq. 417.

In the Mass. case, the plaintiff ignored and repudiated the exchange, proceeding upon his mortgage, and accounted for its non-production by showing the fraud whereby he had been induced to part with it.

So the court of Illinois recently proceeded, where a release had been fraudulently obtained.

Henschel v. Mamero, 120 Ill. 644–5
Citing Hale v. Morgan, 68 *Id.* 244,

where a release intended to be delivered only upon payment was obtained without payment.

One put upon inquiry, by the record or otherwise, acquires no right by seeing the surrendered notes marked 'paid' and being told by the mortgagor that they were paid.

Heively v. Matheson, 54 Ia. 511, citing Bolles v. Chauncey, 8 Ct. 389, Funk v.

Branch, 16 *Id.* 274, and Pomeroy v. Rice, 16 Pick. 22.
Boxheimer v. Gunn, 24 Mich. 372.
Davis v. Maynard, 9 Mass. 242.
Kingsley v. Davis, 74 Me. 498, 503.
Ellis v. Linsley, 37 *Ia.* 334.
Crosby v. Chase, 17 Me. 369.
Smith v. Stanley, 37 *Id.* 13.

Oct. 20, 1854, John Sadlier mortgaged to Eyre, to secure certain dubious investments, and mortgage was registered Dec. 19, 1854. In Sept. 1855, Sadlier, owing the London Bk., conveyed this mortgaged (with other) land to Burmeister as trustee for the bank. Learning of the mortgage to Eyre, the bank refused to go on with the negotiations, unless Eyre would release. To induce E. to do this, S. handed him notes and railway certificates, and Oct. 5, 1855, Eyre executed release, registered Nov. 20, 1855, and the bank made advances to Sadlier. The notes and certificates were forgeries. S. committed suicide in Feb. 1856. The following June, the trustee petitioned to sell the land. Eyre claimed to be an incumbrancer as fully as if he had not released, because his release was obtained by fraud and forgeries. The bank replied that he acted under legal advice, and its trustee was ignorant of the fraud; and that Eyre's reconveyance to Sadlier terminated E.'s interest in the land. The trial Judge and Irish Chancery held the release good as between Eyre and Burmeister.

This was reversed in the House of Lords, WESTBURY, L. C. observing;—

"The respondents left Sadlier to obtain the reconveyance, and *they can claim the benefit only under Sadlier*, WHOSE ACT THEY MUST TAKE AS IT IS."
10 H. L. Cas. *103.

All the Judges expressing like opinions, the Irish

decree was reversed, and Eyre held entitled to the benefit of his mortgage.

Eyre v. Burmeister, 10 Ho. Lds. Cas. *91.

Besides the shares and notes, Sadlier delivered to Eyre other property;—held, it could be accounted for in adjusting the amount due upon the mortgage. *(Ibid.)*

VI.

JUDGMENT.

The decree of dismissal should be reversed; and the cause remanded, with directions to take an account of the sum due upon the mortgage and that the same be foreclosed unless that sum be paid, and that the land be sold for that purpose.

See cases *supra* and *passim*.

EDWIN B. SMITH,
120 Broadway, New York,
Of Counsel for Appellants.

Office Supreme Court U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1891.

No. 31.

JULIA H. McLEAN ET AL.

vs.

RUGGLES W. CLAPP ET AL.

BRIEF FOR CHARLES W. CHADWICK ET AL. (HEIRS OF LOT CHADWICK), APPELLEES.

SHERWOOD DIXON,
S. H. BETHEA,
OF COUNSEL.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1891.

No. 31.

JULIA H. McLEAN ET AL.

vs.

RUGGLES W. CLAPP ET AL.

STATEMENT.

This is an action to foreclose a mortgage made Dec. 4, 1855, to secure four notes for $500, $1,000, $2,209.33 and $2,209.33, due respectively in twenty-five days, five months, twelve months and seventeen months. The last note was due May 4, 1857. The $500 note was paid about the time it, was due. Proceedings were begun by McLean to collect the other notes by suit at law and foreclosure in chancery in the year 1857. (Rec. 52, 381, folio, 681.) These suits were defended, the foreclosure suit, on the ground of usury and other grounds, and it was claimed that the mortgagor, Ruggles W. Clapp, had no title.

A compromise was made on these suits, and these unpaid notes were arranged to be paid by the payment of one thousand dollars cash and balance in new secured notes. This

arrangement was made between McLean and Ruggles W. Clapp personally. The former came from the East at the request of the latter on purpose to make this arrangement. The compromise was made upon the agreement between them, and when Ruggles paid to Ives (an attorney at Amboy) $1,000, then the securities should be exchanged. See McLean's letters dated Nov. 17th, 1857 (Rec., 382, folio 683); Ives' letters (Rec., 383, 385; folio 687); Henry Clapp's testimony (Rec., 330; folio 54, and Ives' letters dated July 28, 1858.

Ives did not receipt for these notes for collection until November 23, 1857. (Rec., 56.)

After this Ives attempted to collect the $1,000 from Ruggles and matters run along unchanged until January 22, 1858, when McLean wrote Ives that he was in trouble in his business and asked him to represent his assets at Amboy as poor, and to do what he could to help him (Rec., 383, folio 686) Then Ives exchanged the securities that Ruggles and McLean had agreed upon and took security for the $1,000, which was good security, being a deed to store in Amboy, worth then $1,800. (Rec., 489, 492 496.) . The taking of the security for the $1,000 draft was all that Ives did upon his own responsibility.

This state of affairs existed until about the time of the beginning of this suit, in 1872. McLean kept the new securities, the land and the notes and mortgages, collected $250 on draft, received rents and profits from the land, and sold some of it; and made no complaint himself, until the beginning of the suit. There was correspondence between Ives and McLean as to the collection of the new securities; they subsequently turned out to be not very valuable. But McLean is responsible for that; he made the arrangement. He was in Dixon, the county seat, about that time and had an opportunity to examine, and

doubtless did examine, the records as to the Henry Clapp land, as well as the new securities. (Rec., 330.) McLean and Ruggles W. were very intimate at that time. (Rec., 366.) The were both from Berkshire county, Massachusetts.

McLean, in person, did nothing towards rescinding this contract then, as we have said, until the suit had begun. That he used the new securities. See: (Rec., 311–314, 51).

It is claimed that Martin L. Arnold rescinded the contract for McLean, by correspondence with Ruggles W. Clapp, in the year 1863. (Rec., 306.) But these letters, we insist, and hereafter show to be fraudulent and prepared for this suit about the time of its beginning. Arnold and Ruggles W. Clapp conspired together about that time, and not before, to prepare a case against Henry Clapp and Lot Chadwick. At that time McLean was not a party to such conspiracy, and he never took an active part in it. He was coaxed into the litigation by Arnold, who agreed, as is shown, to pay all the expenses of the litigation and give McLean half of the gross proceeds. (Rec., 316; folio 545. Rec., 137; folio 300.)

There are many facts hereinafter fully set forth, showing that these letters from Ruggles W. Clapp to Arnold were prepared for the occasion.

On April 2, 1868, five years after the letters were alleged to have been written, McLean wrote to Arnold in such terms as show that no such letters had ever been written. (Rec., 315; folio, 543.) All the correspondence, and the circumstances, and the testimony of McLean show these letters to have been fraudulent. This record is filled with testimony showing the absolute unreliability of Martin L. Arnold and Ruggles W. Clapp. We agree that Ruggles W. Clapp was a scoundrel; and ten of the most reputable citizens of Lee county swear that the reputation of Martin L. Arnold for truth, is bad;

and the testimony of other witnesses shows that he had been impeached again and again in lawsuits at his home. These two rascals combined together to swindle and blackmail Henry Clapp and Lot Chadwick after Ruggles W. had made all that he could off McLean. (Rec., 64, 352, 353, 363.)

There was then no attempted rescission of this settlement by McLean for a period of about fourteen years after the notes were all due, and eleven years after he admits that he knew all the facts.

And then it was an attempted rescission by Arnold, through a conspiracy with Ruggles W. Clapp. The suit was commenced by Arnold. (Rec., 155, bottom.) He has a half interest in the suit (Rec., 157,) and pays all the expenses.

Henry Clapp was always the real owner of the land in controversy until 1869, when he sold it to Lot Chadwick for a good and valuable consideration. Ruggles W. Clapp never had any interest in it but the naked legal title, for the purpose only of making this mortgage. The stock of goods was bought of McLean for the benefit of Ruggles W. and Henry jointly. (Rec., 332.) But Ruggles W. obtained the benefit of all the goods; Henry received no money from them. Ruggles W. took the goods and the money, and agreed with Henry to take care of the notes in question. (Rec., 328; folio 570.)

Henry swears to this and no one denies it. The only intimation against it, is the unsworn statement contained in a letter from Ruggles W. to McLean which is one of his false excuses for not paying.

The record shows that McLean had failed in business in Massachusetts, and was anxious for attorney Ives to help him with his creditors. On January 22, 1858, he wrote Mr. Ives to that effect, (Rec., 383, folio 686):

Then it was, and not before, that Ives acted under McLean's direction and closed up the arrangement the latter had made with Ruggles W. Clapp. (Rec., 383, 4, letter dated May 20, 1858.) McLean was evidently satisfied with what Ives had done. He must have received the benefit of Ives conduct, in settling with his creditors. He ought not be heard now to complain of the consequences. All that Ives in fact did, without instruction, was to exchange the papers, taking security for the $1,000 draft, that was absolutely good at that time.

McLean never did complain for years, and would not have done so then, but for Arnold's champertous contract.

This case therefore has no real merit. McLean made his own settlement; in any event, he aquiesced in the settlement that was made until all surroundings had changed; he took the benefit of the exchange, and his heirs now are trying to make innocent persons pay for their fathers folly.

In addition, Lot Chadwick bought this property for a good and valuable consideration in March, 1869. The question of the *bona fides* of his conduct has been settled by Circuit and Supreme courts of Illinois (Rec. 67 to 110). See case of *Chadwick* v. *Clapp*, 69 Ill., 119. That litigation settled the proposition whether he had paid a sufficient consideration for this farm.

Lot Chadwick also bought without notice of the MeLean claim. The record was not notice of it; because the notes had been paid by the settlement. It is therefore incumbent upon the appellees to prove other notice than the record. They have failed to do so.

Henry Clapp was not a party to any settlement between Ruggles W. and McLean. He knew nothing about it. There is not a word of testimony in the record connecting

Henry with that arrangement; there is nothing tending to show that he knew how the notes were paid.

The plaintiffs in error are barred by acquisence and laches for a period, including the time of abatement, of about NINETEEN years. The suit was abated for eight years. This, under the authorities, should be added to the period of limitation before the beginning of the suit.

In equity then, they are clearly barred and have no right to recover, regardless of the original equities in the case.

BRIEF.

I.

THE NOTES IN QUESTION WERE PAID BY EXCHANGING THEM FOR A THOUSAND DOLLAR DRAFT, SECURED BY A DEED TO THE "MARKET" LOT, AND NOTES, MORTGAGES AND DEEDS, ACCORDING TO INSTRUCTIONS OF MC LEAN. THE MORTGAGE CANNOT THEN BE FORECLOSED. (REC., 382, FOLIO 683; REC., 383, FOLIO 685; REC., 383, FOLIO 686; REC., 365, FOLIO 649; REC., 330, FOLIO 575; REC., 54, FOLIO 131; REC., 489, FOLIO 944.)

II.

(*A.*) THIS SUIT HAS BEEN BARRED BY LACHES SINCE 1857, WHEN NOTES WERE ALL DUE, AND BY ACQUIESCENCE SINCE 1861, WHEN MC LEAN ADMITS KNOWLEDGE OF ALL THE FACTS. SUIT WAS BEGUN IN 1872, AND WAS ABATED FROM 1875 TO 1882. (REC., 29 TO 35; REC., 318–320; REC., 158, FOLIO 310; REC., 311–313, FOLIO 537; REC., 314, 315, FOLIO 541; REC., 316, FOLIO 545; REC., 48 TO 51.)

(a.) *The letters of R. W. Clapp to Arnold were prepared fraudulently, about the time of the beginning of this suit, 1872, and were not written in 1863, as pretended.* (*Rec., 132, folio 272; Rec., 50, folio 120; Rec., 48, folio 114; Rec., 172; Rec., 64, folio 152; Rec., 155, folios 305 6; Rec., 364, folio 645; Rec., 314, folio 541: Rec., 315, folio 542; Rec., 136, folio 277.*)

(b.) *If letters are genuine, the suit is barred by nine years laches before beginning suit and about eight when it was abated.*

(c.) *Absence of R. W. Clapp from state did not excuse laches on McLean's part.*

(d.) *Lot Chadwick had an equity in McLean's acquiescence, not in R. W. Clapp's fraud.*

(e.) *R. W. Clapp could not bind Henry Clapp and Lot Chadwick by rescission.*

2d Jones Mortg., Sec. 1,202, 3d Ed.

(B.) AUTHORITIES ON THE SUBJECT OF LACHES AND ACQUIESCENCE.

2d Danl. Ch. Pr., 1,542, 4th Am. Ed.
Hollingshead case, 1 P. Williams, 742–3.
Story's Equity Plead., Sec. 831, 6th Ed.
Evans v. *Cleveland*, 72 N. Y., 486.
2 Pom. Eq., Secs. 817, 917, 897.
Smith v. *Clay*, 3 Bro. Ch., 638.
Hough v. *Coughlan*, 41 Ill., 130.
12 Am. & Eng. Enc. of Law, 543.
Bowman v. *Wathan*, 42 U. S. (1 Howd.,) 189.
2 Perry, Trusts, Secs. 870, 869.
2 Story's Eq. Jur., Sec. 1,520, p. 758 12th Ed.
Cunningham v. *Fithian*, 2 (Ill.) Gillm., 650.
Cox v. *Montgomery*, 36 Ill., 396.
Greenwood v. *Fenn*, 26 N. E. R., 487, (Ill.)

III.

LOT CHADWICK HAD NO NOTICE OF THE MCLEAN CLAIM.

(Rec., 396, folio, 716; Rec., 628, 329.)
2 Jones Mtg., Sec. 913, 3d Ed.
Flower v. *Elwood*, 66 Ill., 438.

IV.

LOT CHADWICK WAS A *bona fide* PURCHASER. (REC., 388–9, FOLIO 701; REC., 416, FOLIO 755; REC., 380, FOLIO 585; REC., 396, FOLIO 716; REC., 329, FOLIO 572; REC., 348, FOLIO 611; REC., 402–5, FOLIOS 723–732.)

ARGUMENT.

I.

McLEAN AUTHORIZED THE EXCHANGE OF SECURITIES.

The notes in question were paid by exchanging therefor a thousand dollar draft, secured by a deed to the "market" lot, and notes, mortgages and deeds, according to instructions of McLean. The mortgage can not then be foreclosed.

The exchange was made honestly, as intended by McLean. He was at Amboy in August, 1857. The notes were due. He was trying to enforce the collection of them, and until that time had failed; the title to the Henry Clapp property was bad; Jason and Edwin Clapp claimed it; it was very natural then for McLean to attempt to get money down and other security. He, therefore, then made an arrangement with Ruggles W. Clapp when there. He went back to Massachusetts, and wrote to Ives as follows: Dated November 17, 1857. "It "is a good while since I heard from you. I wrote you some "three weeks since, requesting you to write me what the "prospect was of Clapps paying and making the exchange of "papers, *as he agreed when I was at your place.* I also "wrote him at the same time, but have not heard from "him since." (Rec., 382; folio., 683.)

He then expressly said that he had agreed to make the exchange when he was in Amboy some time before. What does that mean, but that he, McLean, had made the contract himself? How can this conclusion be avoided? What escape is there from it? He says plainly that Clapp had agreed to exchange papers when he was there. What does this word "agreed" mean? Clearly that the minds of Clapp and himself had met.

November 23, 1857, Ives replies to this letter: "At the time "I received your favor before this, Mr. Clapp received one "from you, and showed it to me, and sat immediately down at "my table and wrote you, and, I suppose, sent it to you. This "is the reason I have not replied to your last. He has not yet "made any arrangement, but has been trying to make it (I am "well satisfied), for some time past, by which he could obtain "some money." (Rec., 382, folio 684.)

Under date of December, probably the 4th, 1857, Ives again writes McLean: "Enclosed please find draft for $1,000 from "R. W. Clapp, which you will please acknowledge when re- "ceived. I have nearly made arrangements with Clapp, AS "WE TALKED OF DOING WHEN YOU WERE HERE, though I shall "not deliver any papers until this draft is paid." (Rec., 383; folio 685.)

Ruggles W. Clapp evidently talked McLean into the trade. If he made a mistake it was his own fault. He had an opportunity to examine this land so taken in exchange. It was near there; only a few miles from Amboy. He could readily have gone twelve miles to the county seat at Dixon, and have learned all about the title to it, and the probabilities are that he did so examine the record. These letters show that he did not rely upon Ives, for he had before written to Ruggles W. Clapp.

A little more than a month after this letter and draft of December 4, 1857, had gone forward, McLean became so embarrassed in his business that he writes to Ives, as follows:

"NEW YORK, January 22, 1858.

"I am in trouble in my business matters; our store was "closed last week by the sheriff. I am now in New York "trying to compromise matters with my creditors so that I "can go on again. They know something of my matters

"west. I have represented the conditions they are in as being "bad; that I brought suit last spring and that the parties plead "usury, and that I did not know when I should realize on and "how much. * * * You will probably be called upon in "relation to the matter, and you will, of course, represent it as "a bad concern and doubtful what will come out of it, as I am "sure we can truly think and say. A. Clapp has not accepted "the draft, but thinks R. W. will send funds to pay it. I do "hope he will, but I have fears about it. Do what you can "for me." (Rec., 383, folio 686.)

Here is certainly conclusive proof that McLean had conducted negotiations personally with Clapp looking to "a change of papers." It was spoken of by both as "agreed" to, and "talked of," when McLean was at Amboy at some previous time, but when that occasion was is not stated. But it is shown by his own testimony he was at Amboy in August, 1857 (Rec., 46, folio 110), and undoubtedly that was the occasion when it was "talked of" and "agreed" to. After the receipt of this last letter, occurred the only departure by Ives from instructions, which consisted in his making the exchange of papers, without the draft, or $1,000, being paid in cash, but he took what he evidently, with good reason, regarded as ample security for its payment, a deed of the lot called the "Market lot."

All these matters were fresh in the minds of the parties at the time this correspondence was being carried on; there was no occasion for McLean to say, as he does, that R. W. Clapp had agreed to make an exchange of securities if he had not done so; there was no reason for Ives saying that the securities were the same that McLean agreed to take when he was at Amboy (Rec., 385, folio 691), if it was not the fact and so readily refuted.

There is nothing in their correspondence to deny this statement of Ives. McLean and Ives each seem to agree with the other upon that proposition at that time. Ives has sworn that he did not make the contract with Ruggles W. Clapp, but that McLean made it.

Ives' testimony is as follows (Rec., 365, 6, folio 449, 451):

"A. My recollection is that McLean directed me to fore-
"close the mortgage securing the note, and that I filed a bill
"for that purpose in the Lee county Circuit court; that
"afterwards McLean made an arrangement for settlement with
"Clapp by giving him other securities and taking of the notes.

"Q. 17. What became of the suit of foreclosure?

"A. It was dismissed.

"Q. 20. State, if you know, upon whose judgment and
"advice, if anybody's, that arrangement was made between
"McLean and Clapp for substituting these new securities for
"the original notes and mortgage.

"A. I don't know; all I do know is that McLean and
"Clapp stated to me that they had made an arrangement;
"Clapp and McLean at the time seemed to be on very inti-
"mate terms with each other.

"Q. 21. Was that arrangement made upon your judgment
"or advice, or were you consulted by McLean concerning it?

"A. It was not made upon my judgment or advice, nor
"was I consulted in regard to it, that I remember of.

"Q. 22. State what further was done in reference to car-
"rying out the arrangement between Clapp and McLean after
"that?

"A. The draft was not paid on presentation, and some
"time after, I don't know how long, McLean wrote to me that
"he had got into difficulty in his business, and I then took se-
"curity from Clapp for the payment of this draft and surren-
"dered to Clapp the notes and mortgage given to McLean by

"him, and retained the other securities." (Rec., 365-6; folio, 649, 651.)

Ives is sustained by the letters above quoted, and also is corroborated by other admitted facts in the record.

Ives was trying to collect the notes in question. He sued at law (Rec., 52; folio, 126), where he writes under date of March 16, 1857, about dismissing suits and arranging to begin a foreclosure. He began a foreclosure, and usury is plead. See letter, dated July 10, 1857. (Rec., 53; folio, 129.)

Then Ruggles W. Clapp proposed to compromise by paying $2,000 down and giving other securities. Ives writes to McLean of date July 10, 1857, telling of the usurious defense to the foreclosure suits, and closed by saying: "Clapp tells me "now that he will pay $2,000 provided you will take good se- "cured notes drawing ten per cent interest for the balance. I "shall see you next week." (Rec., 53; folio, 129.)

Ives went east and saw McLean. On his return July 28, 1857, he wrote McLean telling him that Ruggles W. Clapp wanted to see him, and arranged for a meeting, restating Ruggles W. Clapp's proposition to give other securities and pay $2,000. (Rec., 54; folio, 130.)

Then McLean went to see Ruggles. (Rec., 46, 47; folio, 109, 112).

Now, if Ives was doing the business on his own responsibility, if McLean depended upon him, what was the object of McLean, during these hard times, going to expense of a trip to the West, a thousand miles away?

But, McLean did not rely upon Ives. We must assume that Ives had no authority to settle; that Ruggles knew it. He, therefore, sent for McLean. The latter went to Illinois, and there made the arrangement, made this compromise. He there agreed to take one thousand dollars cash in a few days, and cer-

tain other notes, well secured. Does anyone believe it possible that a business man like McLean would agree to an exchange of securities without asking what the new securities were? He admits he talked to Ruggles about a compromise, but says he asked nothing about the new paper. (Rec., 47, folio; 112.) It is impossible, under the circumstances. He came to look into the matter. He was sick of his existing securities. He was having difficulties in collecting them. R. W. Clapp evidently talked him into the exchange. There was also great doubt as to the value of the securities he had. McLean must have known something about it, for he wrote to Ives, January 22, 1858, that he had represented the condition of these affairs as bad. (Rec., 383, folio, 686.)

While there at Amboy, he did go to Dixon, and may have examined, in part, the records of the securities on both sides, and may have become satisfied with the new ones.

Henry Clapp testifies that he talked with McLean when he, McLean, was there and examining the records as to Ruggles W.'s land. (Rec. 330, folio 575.) Henry says it was in 1858 or 1859, but it must have been in 1857, when this compromise was made, because McLean was there at no other time from December, 1855, to 1861. McLean nowhere denies this testimony of Henry Clapp, and it is, doubtless, true.

Soon after McLean returned East, Ives wrote him again on the 9th of September. Ives had received a letter from McLean, evidently asking him why Ruggles W. did not make the exchange and the payment. The letter is dated September 15, 1857, and reads as follows:

"Yours of the 9th, inst., was received this morning. Con-
"tents noted. In reply, will say that I called on Mr. Clapp
"immediately on his return frem New York and learned from
"him that he had not paid you as he had agreed to. He gives

"me as a reason, that he did not get this money, but made ar-
"rangements by which he was to receive, he says, 'five thous-
"and dollars' within ten days after his return and now tells me
"that as soon as he gets that money, which he thinks, will be
"this week, he will pay the one thousand dollars, and deliver
"over those other papers as per agreement. You will hear
"from me again in a few days." (Rec., 54; folio, 131.)

Then it was soon after that, November 17, 1857 (Rec., 382; folio, 683), that McLean wrote Ives asking why "*Ruggles W. "did not make the change of papers as he agreed when I was at "your place.*"

Then it was on May 20 and October 18, 1858, after that and before there was any complaint (Rec., 383, 385; folio, 686, 690), that Ives wrote again twice, stating that McLean had agreed to make the exchange. If this wasn't true, why didn't McLean swear that he had written letters denying these statments of Ives, or that the statements in those letters were false?

The admitted facts in the record all sustain Ives.

The only circumstances pointing against him are, his statement saying that Clapp was good in 1856, and his statements in 1858 to 1860 that the exchanged securities were good.

But he was mistaken and doubtless imposed upon by R. W. Clapp, as everybody else was then. Ruggles W. Clapp was recognized then as a man of capital. (Rec., 371; folio, 660.)

He was a "dashing operator," and he probably was well-to-do in 1856–7, but went to the wall, as almost everyone did in the West.

Ives evidently took Ruggles' statements as to the value and condition of the title to the exchanged property. He relied upon McLean's trade. He knew he was not responsible himself, and paid but little attention to it; and all that he said about it was long after the trade was made. He said and did absolutely nothing about it before exchange was made.

We are forced, then, to the conclusion that Ives is right in this matter, and that it is Ruggles W. Clapp who has robbed all sides, and has stirred up McLean against Ives and set Arnold after him. They used Ives as a scapegoat and attempt to impose on Henry Clapp and Lot Chadwick.

They think it easy to attack Ives because he is a lawyer; but we submit that an old and respected member of the bar, who has stood in good repute, cannot be pulled down in a court of justice without evidence. Fraud will not be presumed. Will an attorney's reputation be guessed away? There is surely no preponderance of evidence, or clear proof against Ives in this case.

In weighing the evidence in this matter, and determining as to the good faith of the parties concerned, the time of the occurances and the conditions surrounding the parties, must not be lost sight of. When values are stated, which afterwards proved to be too liberal estimates, we must bear in mind that these transactions took place in the fall and winter of the year 1857–8; that the property in question was situated in, and near to, a new town on the line of the then recently constructed Illinois Central Railroad. The conditions prevailing there in those years is found in the testimony of James S. Briggs (Rec., 488, folio, 942,) and W. D. Estey (Rec., 495, folio, 956-7-8). What in these days is denominated "a boom," undoubtedly prevailed at Amboy then. The history of the times of 1857, in the West, is too well known to require elaboration, nor do we need the evidence of witnesses to establish that men of supposed and reputed wealth, became insolvent in a night; property esteemed of great value on one day could not be disposed of at any price, the next.

Hence, when we find Ives writing to McLean that the "market lot" is ample security for the draft of $1,000, the fact that it afterwards, at forced sale, when the building had been

destroyed by fire, brought but a few hundred dollars, is not to be assumed as establishing a lack of good faith on his part, or proof of his fraudulent connivance with Clapp. Undoubtedly the property, in December, 1857, was worth all he claimed for it.

James S. Briggs, who had been a merchant in Amboy over thirty years, testifies: "From '54 to '58 and '60, the values of "property was somewhat exciting; considered good; was held "at pretty high figures.

"Q. What was the cause of that interest in the town?

"A. Well, the location of the shops, and the railroad and "other things. The Illinois Central Railroad was built through "here in 1854 and the shops were located here in that time; the "round-house and shops were here in 1855." (Rec., 488, folio, 942–3.) Asked what was the value of the "market lot" in February, 1858, he testifies: "Well, I should think prob-"ably in the neighborhood of $100 a foot, $1,800." The value of the lot without the building at that time, he says: "I "should think it might have been worth $400 or $500." (Rec., 489, folio 944.)

Charles W. Bell, who has resided in Amboy since 1852, testifies that the building on this lot was erected in 1854, that he built the cellar and foundation and hauled the material for the store, the lumber and stone; it was two stories, built of lumber, shingled roof, lathed and plastered, had a stone foundation; that its cost "It seems to me it was $1,600 or $1,700, the "material for building was very high at that time." Asked the value of the building and lot in February, 1858, he says: "Well, I should say from $1,700 to $2,000." (Rec., 492-3; folio, 950-1.)

Warren D. Estey, a carpenter, who had resided in Amboy since 1856, estimates its value in the spring of 1858 at $1,800. (Rec., 496; folio, 957.)

There can be no doubt that Mr. Ives acted in good faith and stated his honest opinion of the value of this property when he wrote Mr. McLean in May, 1858, that the lot was good security for the payment of the draft of one thousand dollars.

II.

Laches and Acquiescence.

A. THE FACTS.

This suit was begun May 2, 1872. It was at issue on October 11, 1872. (Rec., 29.) It was referred to an examiner on February 1, 1873. (Rec., 29.) On May 26, 1873, McLean's deposition was taken (Rec., 44) and few other depositions during the summer of 1873 on each side of the case. (Rec., 327.)

Nothing was done for nine years, until July 11, 1882, when the case was dismissed for the want of prosecution. (Rec., 30.) On November 8, 1882, it was reinstated (Rec., 30) on an *ex parte* affidavit.

On December 5, 1882, a motion was made by defendants to strike the case from the docket. (Rec., 31.)

Afterwards, on January 22, 1883, the court overruled the motion to vacate the order of reinstatement; and, upon motion of defendants, ruled complainants to file bill of revivor within ten days. (Rec., 35.) The bill of revivor was filed on February 10, 1883.

Edward W. McLean, complainant, departed this life on February 25, 1875, and his administrator was appointed March 3, 1875. (Rec., 318, 319, 320.)

It will be observed that there was no judgment of the court that the suit be revived; the question as to the right to revive

it, was not passed upon at any time. The form for a judgment of revivor is: "The court doth order "that this suit, "which has become abated in manner aforesaid, stand revived "and be in the same plight and condition that the same was "in at the time of such abatement." (3 Daniels Chan., "Prac. p. 2,358, 4th Am. Ed.)

No attempt was made to enter such an order. The suit was abated from McLean's death on February 25, 1875, until the filling of te bill of revivor on January 22, 1883.

The statute of limitations began to run after the abatement on the day the administrator was appointed March 3, 1875. It ran then nearly eight years.

The statute had run before that time from 1857 to 1872—nearly fifteen years—or, from the time McLean admits he discovered the condition of affairs in 1861 to 1872, or eleven years. The statute ran then from the time the notes became due, including the period of abatement, for twenty-three years; or for about nineteen years from the discovery by McLean of the condition of the affairs.

McLean, in his life-time, and before the filing of this bill, but after he discovered the alleged fraud that had been practiced on him, sold considerable of the property acquired in the exchange of securities. These were absolute sales, made without consultation with R. W. Clapp or Henry Clapp or W. E. Ives, and he hereby placed it out of his power to restore what he had acquired in the exchange of securities, and as a result lost any right he may have had to rescind the exchange of securities for fraud. He, in fact, ratified and acquiesced in the action of Ives.

One of those sales was a conveyance to Martin L. Arnold of part of the land received from Clapp.

Although Arnold attempts to deny that this was an absolute

sale by testyfying that the conditions on which he received the deed were that he should hold it clear from incumbrance to tender back if he was successful in the suit, and to use to defray costs if he was defeated, (Rec., 171; folio, 328), yet when we secure the deed, itself (Rec., 158; folio, 310, Rec., 311, 312, 313), and the letter with which it was accompanied by its execution, written by McLean to Arnold, transmitting him the deed, we find that the date of the acknowledgement of the deed and the letter correspond precisely, indicating certainly that this is the deed referred to in the letter, and McLean therein says (Rec., 313; folio, 537.):

November 29, 1867. "I have executed the deed and en-
"close it to you. Your proposition to pay me $150 one
"year from next spring, which I suppose means the 1st of
"April; you did not say whether with interest or not, but I
"suppose with interest and you to pay all taxes which have
"been or may be assessed on the land, which you say you
"have already paid to the present year, about $50. You also
"say that if you can realize so you can pay more than $150
"you will do so. I hope you will do well with the land, make
"something out of it, as I have no doubt but what you will,
"you being on the ground, where you can watch your chance.
"You will please forward me your note for the $150; also your
"receipt for all moneys paid for taxes for me, and also your
"receipt in full for your services."

This isn't the languags of one conveying a piece of land on the conditions Arnold pretends. But we are not left to this alone, for in a letter dated eleven days prior to this he had written.

"November 18, 1867.

"Yours of 11th inst. is received, with blank deed to fill out
"if I thought best to accept of your proposition; of course I shall

"have to leave the whole matter with you in regard to the "land, as I have written before. I want to close it out the best "I can and I know you will allow me all that you can afford "for it, and I will accept of your proposition to pay me $150 "at the time named and close up the concern and call all our "matters square, you paying all the taxes, which you have "paid and what is to pay, this year and call all square for "what you have done for me up to the present time and also "to settle with Hitchcock when the last payment is due. * "* * (Rec., 314, 315; folio, 541.) Please let me hear "from you by return mail," etc. And evidently return mail brought the desired reply, for on the 29th—eleven days later —we find him executing the deed and forwarding it to Arnold as already quoted.

What is true of this transaction with Arnold, is also true of the sale by McLean of other of the property received in the "substituted securities" from R. W. Clapp. By a deed of March 12, 1868 (Rec., 193; folio, 305) McLean conveyed to Cephas Clapp for a consideration of $850 an undivided third of section 12, which had been conveyed to him by Clapp. This deed was made in pursuance of a contract much earlier in date, made by McLean with one Hitchcock (Rec., 153; folio, 302) and at request of Hitchcock the conveyance made to Cephas Clapp (Rec., 314; folio, 539, 540.)

No word or intimation is contained in any correspondence produced passing between McLean and Arnold by which McLean indicates that R. W. Clapp is to be consulted at any time, or that these sales are in any particular different than such as any absolute owner would make under similar circumstances.

Still earlier than this, evidently at the commencement of the negotiations which resulted in Arnold instituting this suit on speculation, he writes a letter which plainly shows

that he (McLean) had then abandoned all intention of making any effort to set aside the exchange of securities which Mr. Ives had made while acting for him in the matter; that letter says:

"You want to know whether *I intend to do anything with* "*Ives*, and if not what I will give, over and above the ex- "pense and cost of what can be made in the matter. If I "was there on the ground I should feel more like taking hold "of the matter; but as it is, I being here, so far off, and having "lost so much money there, I do not feel like paying out any "money for expenses of prosecuting, etc. I KNOW HE OUGHT "TO BE MADE TO PAY, BUT I HAD RATHER LOSE THAN GET "INTO LAW WITH ANY ONE, especially such as he is. AS YOU "WRITE TO KNOW WHAT SHARE I WILL GIVE over and above "cost and expense of prosecuting, or what is made, I will say "that I will GIVE ONE-HALF, but I AM TO BE AT NO EXPENSE "OR TROUBLE IN THE MATTER; that is, I am to have one-half "of what is made over and above expenses, you paying all "expenses whether anything is made or not, and in case any- "thing is made I have one-half." (Rec., 316, folio 545.)

These letters were all written long after the dates of the pretended letters of R. W. Clapp to Arnold in 1863, by which it is pretended that an arrangement had been made between them for Arnold to dispose of the property and securities received in the exchange to the best advantage, and resort to the original mortgage for any deficiency; yet no mention of the existence of any such letters is contained in any of them, and Mr. McLean certainly never had any knowledge of their existence. He entertained no design, during all these years when he was selling these lands, of at any time resorting to the original mortgage; he had acquiesced in the exchange of securities that had been made. He disposed of these lands as here shown, whether to the best advantage or not there is no

evidence. He placed it entirely out of his power to restore any of it to the defendants, and by so doing lost any right he might be supposed to have had to rescind the transaction.

In McLean's own testimony, given in this case May 26, 1873 (Rec., 44), he says (Rec., 48, top): "After making "inquiries about the securities taken by Ives, I discharged "him, demanded and received my papers which were in his "hands, and placed them in the hands of said Arnold to make "investigations, and told him that if he found that they were "not good to inform R. W. Clapp I should hold onto the "original mortgage and to deliver to said Clapp the securities "taken by Ives."

When asked (Cross-interrogatory 9; Rec., 50, folio 120), to state the steps he had taken to repudiate the transaction by which Ives had made the alleged exchange of securities, McLean testifies:

"I took steps to repudiate said transaction in June, 1861, "through M. L. Arnold, as stated in my answer to the six-"teenth direct interrogatory. I took no other steps myself "than as therein stated."

McLean was asked whether he had ever sold any of the lands received at the time of the exchange of securities, and testifies: "My agent, Mr. Arnold, sold and sent me a deed "to execute of the interest I received by the Craig property "to me; Hitchcock" (evidently a misprint, meaning a deed for me to execute to Hitchcock.) (Rec., 51; folio 122, 15th Cross-Interg.)

(*a.*) *The letters of R. W. Clapp to Arnold, dated May and June, 1863, were not written until about beginning of Suit.*

The alleged letters of R. W. Clapp to M. L. Arnold, dated in May and June, 1863 (Rec., 306, folio 524-5), afford the only pretense of an excuse for the, otherwise inexcusable, laches of

McLean. An examination of the entire testimony and circumstances in evidence establishes that those letters were not written at the times they purport to have been written, and were ante-dated, being evidently prepared by Clapp and Arnold in collusion at about the time the original bill in this case was filed, May, 1872; and that McLean had long before that abandoned all intention of attempting to set aside the exchange of securities made by W. E. Ives, and had acquiesced therein and accepted the results of disposing of the property received in exchange.

Both R. W. Clapp and M. L. Arnold are of that character that we may well expect them to commit an act of this kind. R. W. Clapp has been well described by complainan's' witness, E. D. Shaw as a "bold crooked operator—in fact, an "enterprising villian." (Rec., 132, folio 272.) M. L. Arnold is shown by his testimony to be engaged in speculation in this litigation; and prosecuting this suit for half of what can be made off it; while the many reputable citizens of the community in which he resides, who testify to his notoriously bad reputation for truth and veracity, establish his character as that of one ready to engage in such manufacturing of testimony, if required to win.

Those letters constitute the only possible excuse shown in this record for the gross laches of McLean. He discovered, as early at least, as in June, 1861 (Rec., 47 bottom, folio 114), the worthless character of the securities which he says Ives had taken in exchange for the notes of R. W. Clapp. Nothing short of an express agreement would excuse his delaying until May, 1872, the filing of a bill to rescind that transaction, which he says, he did not authorize, and in which he says he was so greatly defrauded.

Establishing that those alleged letters of May and June, 1863, were fabricated, are these further facts: McLean tes-

tifies that he never made any personal effort to ascertain the whereabouts of Clapp, but took steps through Arnold, in June, 1861, to repudiate the transaction (Rec., 50, folio 120), and that he had not known the whereabouts of R. W. Clapp since June, 1861, except by heresay. (Rec., 48, folio 114, top.) Yet April 2, 1868, we find him writing to Arnold (Rec., 315, folio 543): "R. W. Clapp was here in the winter—about the "last of December, I think. I saw him and had some talk "with—about matters. He said that Ives had given him a "hard one—had swindled him bad. I did not say anything to "him about the mortgage, that we thought of holding onto "the land, or trying it, because I did not think it would do any "good, as I know well enough that I could not do anything "with—more than get a promise, and that he claimed that he "had paid Ives and that Ives had not been true to me nor him. "* * * I did not get anything out of R. W. when he was "here that would be of any benefit, not so much as a promise." This is indeed remarkable language for McLean to be using to Arnold in 1868, if it be true that in 1863 R. W. Clapp had written the letters Arnold produces. Arnold, bear in mind, is the prime mover in this suit on the part of the complainant; he employed the counsel who filed the original bill (Rec., 172); but for him, it would never have been instituted. It was commenced by him and R. W. Clapp, the latter of whom declared that he could turn the suit either way; and that if Lot Chadwick would give him two thousand dollars, he would turn it in his favor. (Rec, 64, folio 152.) The occasion when this was said by R. W. Clapp was undoubtedly the same day that he went to Henry Clapp's home in company with M. L. Arnold, and immediately following which occasion, Arnold hurriedly takes the cars and goes to Chicago and institutes this suit, as he testifies. (Rec., 155, folio 305-6.)

This R. W. Clapp also stated to Henry Clapp (Rec., 352,

353, folio 621–2), and the letter which he writes to Henry Clapp May 24, 1872 (immediately after the filing of this bill (Rec., 363, folio 644), indicates the same desire to levy blackmail on Lot Chadwick. He says: "Having learned you had "gone to Massachusetts, and from yourself that you are amply "secured for your $10,000, and had no further interest in the "Bradford property, I went to Chicago and *put in answer in* "*the McLean suit*, to come off June 3d next, said answer to be "recalled should you desire it, that being the condition of the "answer. Should you wish me to be at Chicago on the 3d "of June, please forward me $300 as a loan, the same to be "paid by me to you, by express or telegraph, to R. W. Clapp, "St. Cloud, Minnesota. Let me hear from you at once. "Yours truly, R. W. Clapp." Very properly, when forwarding this letter to his counsel, Hon. John V. Eustace, Lot Chadwick indorses on it, "I send this to confirm your belief that R. "W. Clapp and Arnold have got up this case without McLean's "knowledge." (Rec., 364; folio 645.)

And the "answer" which he here says he "put in the Mc-"Lean suit, to come off in June," we find in the possession of the solicitor of complainants afterwards when taking the proofs in this case late in June, 1883, (Rec., 352, folio 620). The fact that R. W. Clapp is thus shown to be in communication with those conducting this litigation in the name of McLean so long as he lived, and since his death in the names of his heirs, indicates quite satisfactorily that he and they are acting concertedly, and that the alleged letters of May and June, 1863, upon which reliance is placed to excuse the delay in instituting the action to rescind the exchange of securities, have been ante-dated as we contend.

On this same subject A. Z. Bodine testifies that within three months before July 17, 1883 (the day he was testifying), R. W. Clapp said to him that he (R. W. C.) could throw the case either way with his testimony. (Rec. 349, folio 613.)

The pretended letters of R. W. Clapp to Arnold when produced by him were not accompanied by any envelopes, which would be the case if carried through the mails; a trifling circumstance if it stood alone, but when we find in Arnold's possession, at the same time, three envelopes, which were received by him in 1873 (Rec., 166, folio 321 top), one of which contained a letter dated March 3, 1873, which he and his counsel deemed it "improper" for him to show on his examination as a witness (Rec., 164, folio 318); we are impressed with its importance. Arnold strives to account for his interest as having been acquired through an arrangement made with McLean by letters that were lost by the attorneys whom he first employed (Rec., 160–1, folio 313), and (Rec., 168 bottom, 169 top; folio 324–325). Finding it necessary to account in some manner for the fact that McLean had conveyed to him, Arnold, a part of the land received by him from R. W. Clapp, by a deed dated November 11, 1867, Arnold testifies that these alleged letters lost by his attorneys "contained an- "other proposition, that if I would go on and prosecute the "suit, that I should hold that land deeded to me November "29, 1867, so I could tender it, if necessary, to defendants if I "beat in the suit. If I got beat I was to have the land to sell "to help pay the expenses of prosecuting the suit." (Rec., 171, folio 328.) For the moment evidently forgetting this pretence that five years before that R. W. Clapp had distinctly authorized him, acting for McLean, to sell the land or do with it the best he could; and that there was no obligation resting on McLean to keep himself in condition to tender back to R. W. Clapp, or any other of the defendants, any part of the "securities" obtained by Ives.

Further indicating that the pretended letters from R. W. Clapp have been ante-dated, and made for the purpose of fur-

nishing an excuse for the, otherwise inexcuable, laches of complainant, is the fact that the bill of complaint makes no reference whatever to the existence of any such arrangement, and proceeds upon an entirely different theory. In the bill, complainant, after setting forth the allegations of fraud on the part of R. W. Clapp and W. E. Ives, and the worthless character of the substitued securities, states that $250 had been paid on the Alfred Clapp draft (Rec. 4, folio 5, bottom) and realized $850 from the sale of a small portion of said land. (Rec. 4, bottom, 5, top); that "your orator has been during all the "time since said notes were given and said pretended ex- "change made, a resident of a distant state, and did not dis- "cover the fraud which had been practiced upon him until "many years after it had been perpetrated, and that said sums "of money (the payments which he has set forth of $250 on "the Alfred Clapp draft, and $850 received from sales of a "small portion of the land must here be meant) were received "before the discovery of the fraud; that said R. W. Clapp "removed from the state of Illinois before the discovery of "the fraud by your orator and his whereabouts were un- "known to your orator, but as soon as he discovered him, he "repudiated the action of said Ives and demanded his notes "which has been given up; that said Ives was immediately "informed by your orator that his action in the exchange was "unauthorized and repudiated, and your orator has taken "every means in his power since his discovery of the fraud to "secure his rights, but without avail. The said notes and "deeds so taken by Ives in exchange as aforesaid, your ora- "tor has always been and is now ready and willing to sur- "render, and hereby offers to surrender and deliver up the "same to whomsoever it may be ascertained is entitled to the "same and to give proper credits for all the moneys received "on account therefor."

This is all that is contained in the bill whereby an attempt is made to account for this delay; and there is no pretense that it is excused or was occasioned by any agreement with R. W. Clapp; on the contrary, it is apparent that McLean and the counsel who drew the bill knew nothing of any such arrangement as Arnold now pretends had been made.

November 18, 1867, writing Arnold in reply to an offer by Arnold to purchase part of the land acquired in this exchange of securities. McLean says: "If you can afford to do that "(pay the price he asks) I should be glad, as you are aware "out of some $5,000 I shall get about $1,000." (Rec., 314-315; folio 541.) In a preceding letter on the same subject, October 17, 1867, he wrote Arnold: "I shall be glad when we "get these matters all closed up, and I think you will; how I "have been swindled and—I you know it." (Rec., 315, folio 542.)

Not a word can be found anywhere in the record, either in the letters of McLean or in his testimony or in the original bill, that indicates any knowledge on his part of the existence of any such letters as those Arnold produces and pretends were written in 1863. Nowhere in the alleged conversations of Arnold with Henry Clapp or Lot Chadwick does Arnold make mention of there being any agreement with R. W. Clapp that the substituted securities may be disposed of and then resort be had to the original notes and mortgage; on the contrary, every letter written by McLean that has been produced; the averments of the original bill; the testimony of McLean, and the entire record (except Arnold) is silent on that subject. Defendants are not obliged to attempt any defense of R. W. Clapp, or to make a pretense of contending that he was not disposed to defraud McLean; we are satisfied that such was his character, and that he would and did deceive him and Ives. And this man we find "stranded a couple of

"months" at the home of E. D. Shaw in Lee Center in the spring of 1872 (Rec., 136; fol., 277) declaring that "he "and Arnold were about to institute a suit in the United States "court to forclose the mortgage on the place." (Rec., 64; fol., 151.) In correspondence with Arnold, writing at least one letter which Arnold, and his counsel, complainant's solictor refuse to exhibit (Rec., 164; fol., 318); endeavoring to persuade Lot Chadwick (through a letter to Henry Clapp) to furnish three hundred dollars to enable him to make a needless trip to Chicago on the return day of process in this case in June, 1872; well knowing that it would be understood, as it was, as a demand of money from Lot Chadwick, and evidently hoping Chadwick would pay hush money, lest he R. W. Clapp "turn the suit" against him; placing in the hands of the solicitors for McLean (Arnold) his answer in this case where it remains to this day so far as the record shows, it being proven to be in his hands when evidence was being taken in 1883 (Rec., 352; fol., 620); and stating to Bodine in 1883 that he could throw the case either way by his testimony, and trying to get Bodine to persuade Chadwick to pay $2,000. (Rec., 308-9.) All the facts and circumstances point unerringly to a combination between Arnold and R. W. Clapp, and establish beyond controversy that the pretended letters of 1863 were not written by R. W. Clapp at the time they purport to have been written, but were concocted long since that time, and long since March 1, 1869, when Lot Chadwick bought and paid for his land.

(*b.*) *If those letters are true, the suit is barred by laches and acquiescence thereafter.*

But assume that the letters from R. W. Clapp to Arnold, alleged to have been written in 1863, were written at that time, and that R. W. Clapp had the power then to bind Henry

Clapp and any one holding under him then, whether innocent purchasers or not.

Do these facts, existing in 1863, excuse the laches and delay in attempting to foreclose this mortgage, from 1863 to 1872, and in permitting the abatement of the suit from 1875 to 1883?

About nine years in one period, and about eight years in another period, a total of about seventeen (17) years.

The property must have increased in value. A third person, Lot Chadwick, had obtained rights.

The statute of limitations is not the necessary limit in equity. Each case depends upon its own circumstances. Courts of equity will bar a suit in much less time, if it seems equitable to do so. Courts of equity discourage stale claims.

McLean and his heirs, and Arnold could have saved all this trouble by bringing a foreclosure suit. They could have protected themselves and others by acting as if they intended to rely upon the mortgage. They knew Henry Clapp had notorious, adverse possession of this property, and that R. W. Clapp had no real title to it. They knew that there was a claim on Henry Clapp's part that he owned the land, for Arnold takes the position that he talked to Henry Clapp before March, 1869. They knew, of course, that the notes were taken up and in the hands of Henry Clapp or R. W. Clapps and that they might be used to some innocent purchaser's injury. If they had then (in 1863) intended to rely upon the mortgage, they most certainly would have brought suit to foreclose at once. If that story is true, and if they then had a case, they would have taken no chances.

But they adopted the other course. They stood idly by; or they waited intentionally until Lot Chadwick was old and feeble, and until the testimony was partially lost. This case was

not pushed actively by them until about the time of Lot Chadwick's death at the age of ninety-one.

We submit that under all the authorities, and as a matter of equity and justice, this case is barred upon appellant's own statement of the facts.

This is particularly true when the circumstances are taken into consideration of McLean's settlement, his own acquiescence until 1872, his letters to Arnold recognizing the exchange, his sales of the lands received; and when it is further remembered that Arnold under this champertous contract has been the only active person in attempting to rescind the settlement, or to foreclose the mortgage.

(*c.*) *Absence of R. W. Clapp from State does not excuse laches.*

Counsel claims, however, that McLean is excused from rescinding this contract, because he says that Ruggles W. Clapp was out of the state of Illinois during a great portion of this period. The record is not very full on that question of fact; and it does not appear distinctly where Ruggles W. Clapp was during this time; but if he was absent as alleged, it cuts no figure in the case. In the first place, this is not a question of the statute of limitation. It is a question of rescission, of acquiescence, a question as to whether McLean in fact rescinded, or ought to have rescinded the arrangement that he had made with Ruggles W. Clapp, in which he surrenders the notes in question. Rescission required some action on McLean's part. He was required to do something. He was not prevented from acting by Ruggles W. Clapp's absence, if he was so absent. He could have filed a bill in chancery to foreclose the mortgage and have obtained jurisdiction by publication of notice. He could have foreclosed by *scire facias* upon return of two writs, "not found." If he had been depending upon this mortgage, there is no question in the world

but that he would have done one of these two things. If he could not find Ruggles W. Clapp and could not make rescission any other way, it was easy for him to begin the foreclosure proceedings, and he was bound to do it. He could have gone to the owner of the land, Henry Clapp.

(*d.*) *Appellee's have equity in Appellant's laches.*

It is said for appellants, (Brief, 14.) "Lot Chadwick had no "equity in Ruggles W. Clapp's fraud, to insist there should be "no rescission on account of it."

But Lot Chadwick had a right to rely upon McLean's acquiescence in the arrangement that had been made with Ruggles W. Clapp, whether it was fraudulent or not. By reason of that long continued acquiescence an equity arose in favor of one who took title during it.

(*e.*) *R. W. Clapp could not bind Henry Clapp and Lot Chadwick.*

The authorities hereafter cited, establish the rule conclusively that acquiescence for a much shorter period than the facts show here, will bar an equitable action.

The testimony clearly brings McLean within the rule laid down by all the authorities as to acquiescence. There could scarcely be a stronger case.

But appellants' counsel attempts to avoid that rule by setting up that R. W. Clapp consented to a rescission, and therefore no bill to set aside the settlement was necessary.

This proposition is based on Exhibits 11 and 12. (Rec., 306.)

These letters were prepared at the time of the beginning of this suit. They are fraudulent. They were prepared by R. W. Clapp and Arnold for the occasion, and were not written at the time of their pretended date as heretofore shown.

But if it were not true, we submit under the facts and circumstances of this case that Ruggles W. Clapp could not by his conduct bind Henry Clapp and his innocent vendees.

What is the relation of Ruggles W. Clapp to the property in controversy?

He had the naked legal title in said property, from November 28, 1855, to January 10, 1868. He never had any equitable claim on the property. He never was in possession. He never received or claimed any of the rents and profits of the land. Henry Clapp was in possession, received the rents and profits and was the actual owner during all this period from 1855 to 1869. He was so recognized by the community. His possession during that period was notice to the world.

When this mortgage of December 4, 1855, was made, this state of facts was in existence, had so been for a number of years and so continued for a number of years thereafter.

The mortgage was made to secure the payment of notes given for a quantity of goods bought of McLean by R. W. Clapp for Henry Clapp and R. W. Clapp's joint benefit. (Rec., 332, 333; folio 579, 80.)

After the store was bought and the mortgage given, Henry's interest in the goods apparently ceased. Ruggles W. sold the goods and got the benefit of them. Henry Clapp received no benefit.

Henry Clapp testifies as follows:

"After another period of time he informed me that he had, "would or could make arrangements with E. W. McLean to "secure him or satisfy him for his stock of goods, and he then "claimed the right to assume and appropriate to his own use "the proceeds of this stock of goods, which he did." (Rec., 328; Ev., 57.)

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This testimony is uncontradicted.

Ruggles W. told Henry Clapp that this mortgage on the latter's land was released. He made this statement at the time the deed was made in 1868. He told him where to find the release and the notes. He found the notes, and not the release.

Henry Clapp's testimony (Rec., 329; Fol. 571, 572):

"He (Ruggles) said that I would find a release of mortgage "attached to the back part of a ledger he left in Illinois; also "the notes accompanied the mortgage, among a parcel of "papers which he had left boxed up in Illinois, and the box "he told me he thought I would find among Perry's relatives. "Perry had been a clerk for him. I found certain notes of "four or five thousand dollars that corresponded with the de-"scription of the notes in the mortgage, with the exception of "one note, a five hundred dollar note, which seemed to be "missing.

"Inter. 9. Did you find any release of the mortgage?

"Ans. I did not." (Rec., 329; Fol. 572.)

So there were no equitable reasons for Henry Clapp's land paying the store debt, as between him and R. W. Clapp. The latter had the benefit of the goods. He then made a settlement with McLean, either in person or through Ives. This arrangement was consummated in January, 1858. (Rec., 383; Fol., 686–7.)

R. W. Clapp after that time had no possible equitable claim to the land in controvery. He had the money arising from the sale of the goods bought of McLean. He had apparently paid for them. Henry Clapp had received no benefit from the stock of goods.

Thereafter the conduct of R. W. Clapp was hostile to Henry. He instigated this suit. He threatened to throw it against him. He tried to get him and Chadwick to buy him

off. He filed an answer that was placed and remained in the hands of the attorneys of McLean and Arnold. The circumstances indicate that he and Arnold were partners in the prosecution of this case.

The question is, whether, under these circumstances, in a court of equity, a naked trustee can, by his fraudulent conduct and agreement, bind the *cestui que trust* ?

We submit that he can not. That it would be against conscience and equity to do so. It would be permitting a fraud and protecting a trustee in a fraud upon his *cestui que trust.*

But it may be said that R. W. Clapp had cheated McLean, and when he told the latter's agent (Arnold) to apply what he could make out of the exchanged property on the indebtedness (assuming that he did so tell him), he was only righting a wrong and doing what equity required him. It must be remembered, however, that then Ruggles W. Clapp had no equitable interest in the Henry Clapp lands. He had received the proceeds from the sale of the goods. He (R. W. C.) still had the legal title, but no more. His right to use that title as the representative of Henry, had passed from him by his taking the stock of goods.

Counsel cites 2d Jones Mort., Sec. 1202, 3d Ed., to sustain the position that the purchaser from the mortgagor takes no better title than the mortgagor had, and is bound by his acts. If it is conceded that this is the law, it does not apply to this case; because Henry Clapp and Lot Chadwick do not stand in the position of purchasers from the mortgagor. R. W. Clapp was not the owner of the land. Henry was in fact the mortgagor. Ruggles held the legal title to make that mortgage. He made it. He afterwards obtained the goods for which the mortgage was given, and thereby released all his claim to the land.

But Jones, in the same section, lays down this rule: "But "when a note and mortgage are once barred, although the "mortgagor may, by a subsequent part payment or acknowl- "edgment revive the mortgage, so far as it affects his own "interest in the premises, he cannot revive it as against his "grantee, or any other parties who have acquired interest in "the premises *prior to such revivor*."

(2d Jones Mort., Sec 1,202, 3d Ed.)

After the mortgage was given, in 1858, Ruggles W. took up the notes and made an arrangement by which he rightfully had possession of them. They were paid. He afterwards claimed the right to, and did take the stock of goods, and the profits arising from them; and thereafter surrendered the notes to Henry Clapp. By this arrangement Ruggles parted with all rightful claim or equitable title to Henry's land.

These notes and the mortgage had been barred by acquiescence. McLean had consented to this arrangement for five years. His letters show that he considered and treated the land as his own during that period. He makes no complaint. He stands by for that time, from 1858 to 1863, and permits Ruggles W. Clapp to use these notes to make money off of Henry Clapp. Now, under the authorities as to acquiescence, McLean's notes and mortgage were barred. They were barred in equity as much as they would have been barred in law by sixteen years limitation.

There are several ways of barring a note and mortgage in equity; and one conclusive way is, by acquiescence.

This being true, after the note was barred, as stated by Jones, Vol. 2, Sec. 1,202, the mortgagor, Ruggles W. Clapp, had no power to renew the mortgage and notes, so as to bind Henry Clapp, or Lot Chadwick.

The statute ran during the abatement of the suit.

Daniel, in his work on Chancery Practice, (Vol. 2, 4th Am. Edition, p. 1542) says: "It seems however that the statute applies to suits before decree." And on page 1543 he says, "It is to be recollected that the statute of limitations will "run pending an abatement in all cases, except a decree to "account."

Hollingshead case, 1 P. Williams, 742, 743.

Story in his Equity Pleadings, 6th Ed. sec. 831, says, "If a "person who is entitled to revive a suit, does not proceed in "due time he may be barred by the statute of limitations of "actions, which may be pleaded to a bill of revivor afterwards "filed."

It runs from the time of the appointment of the legal representative.

To same effect:

Evans v. *Cleveland*, 72 New York, 486.
Coit v. *Campbell*, 82 New York, 509.

Foster's Federal Practice, at page 265, says, "The running "the statute of limitations after the time when the person be-"came entitled to revive, is also, in most cases, except after a "decree for an accout, a defense, and a bar to a bill of revivor, "which may be set up by a plea."

The authorities all seem to agree upon this question. We know of none to the contrary. Counsel has cited none on the point. There never was any order that the suit stand revived.

The case would be barred at law because of the statute of limitations. There is no doubt about that, unless they show something to remove that bar. The courts of equity, of course, follow the law; and where the notes would be barred

at law, bar them in equity. We have shown in other parts of this brief, that there is no excuse for not bringing the suit within the statutory period. The alleged payments, new promises and rescissions are all fraudulent and of no avail, as we have heretofore shown.

If Ruggles W. Clapp was absent from the state, it would make no difference in equity. It would be laches just the same. McLean could could have foreclosed in chancery or by *scire facias*.

After he had discovered the fraud, McLean waited ten years and ten months; and the bill was then filed, not at his instance or suggestion, but by a speculator prosecuting it on shares, who allows it to be abated seven years and eleven months before causing a bill of revivor to be filed in the name of the heirs and widow of McLean. Even if the additional time the suit was abated, may not be added to the time the statute of limitations run before the original bill was filed, it certainly is to be regarded as important in determining the question of laches. The real party in interest, Arnold, has all this time been under no disability, and offers no excuse for the delay.

In equity these facts bar a recovery on the ground of laches.

The following authorities indicate the law upon this subject:

"Acquiescence in the wrongful conduct of another, by which "one's rights are invaded, may often operate, upon the prin- "ciples of and in analogy to estoppel, to preclude the injured "party from obtaining many distinctively equitable remedies, "to which he would otherwise be entitled. * * * In "order that this effect may be produced, the acquiescence "must be with knowledge of the wrongful acts themselves, "and of this injurious consequence; it must be voluntary, not "the result of accident, nor of causes rendering it a physical,

"legal or moral necessity, and it must last for an unreasonable "length of time, so that it will be inequitable, even to the "wrong-doer to enforce the peculiar remedies of equity against "him after he has been suffered to go unmolested, and his "conduct apparently acquiesced in. * * *

"Upon obtaining knowledge of the facts, he should com- "mence the proceedings for relief as soon as reasonably pos- "sible. Acquiescence consisting of unnecessary delay after "such knowledge, will defeat the equitable relief."

2 Pom. Eq. Jurisprudence, Sec. 817.

Nothing can call forth this court into activity but conscience, good faith and reasonable diligence.

By Lord Camden in *Smith* v. *Clay*, 3 Bro. Ch., 638.

The delay of the complainant in prosecuting the original bill has not been accounted for, and no attempt made to do so. It is inexcusable.

"Lapse of time when it does not operate as a statutory bar or "positive bar, operates by way of evidence, and may create a "presumption that parties have waived or abandoned their "rights.

Hough v. *Coughlan*, 41 Ill., 130.
12 Am. and Eng. Enc., of Law, 543.

"If the plaintiff's agent have knowledge of the facts giving "rise to the right of action such knowledge may be imputed "to the plaintiff for the purpose of charging him with laches.

Bowman v. *Wathen*, 42 U. S., (1 Howd.,) 189.

"After he has obtained knowledge of the fraud, or has "been informed of facts and circumstances from which such "knowledge would be imputed to him, a delay in instituting "legal proceedings for relief, although for a less period than "that prescribed by the statute of limitations, may be, and

"generally will, be regarded as an acquiesence, and this may "be and generally will be, a bar to any equitable remedy.

2 Pom. Eq., Sec. 917.

There is a difference between laches and acquiescence. Laches is mere delay, while acquiescence, is more than delay. It is delay and some active conduct upon the part of the person acquiescing. Laches may require the full limit of the statute of limitations to bar the action, while acquiescence will bar it in a very short time.

Perry, in Vol. 2, of his work on Trusts, Sec. 870, discusses the doctrine as follows:

"But acquiescence in a transaction, may bar a party of his "relief in a very short period. Thus, if one has knowledge "of an act, or it is done with his full approbation, he cannot "afterwards have relief. He is estopped by his acquiescence, "and cannot undo that which has been done. So if a party "stands by and sees another dealing with his property in a "manner inconsistent with his rights, and makes no objection, "he cannot afterwards have relief. His silence permits or "encourages others to part with their property, and he cannot "complain that his interests are affected. His silence is "acquiescence, and it estops him."

In Sec. 869, the same author says: "Courts of equity will "sometimes refuse to grant relief, although the statute of lim- "itations cannot be pleaded in bar, and although, presumptions "cannot arise from lapse of time, or may be conclusively "rebutted."

Pomeroy's Equity Jur., Vol. 2, Sec. 897, says: "All these "considerations as to the nature of misrepresentations, require "great punctuality and promptness of action by the deceived "party upon his discovery of the fraud. The person who has "been mislead is required, as soon as he learns the truth, with

"all reasonable diligence, to disaffirm the contract, or abandon "the transaction, and give the other party an opportunity of "rescinding it, and of restoring both of them to their original "position. He is not allowed to go on and derive all possible "benefits from the transaction, and then claim to be relieved "from his own obligations by a recission or a refusal to per- "form on his own part. If after discovering the untruth of "the representations, he conducts himself with reference to "the transaction as though it were still subsisting and binding, "he thereby waives all benefit of and relief from the misrep- "resentations."

2 Story's Eq. Jur. (12th Ed.), Sec. 1,520 (page 758), says: "But a defense peculiar to courts of equity is founded upon "the mere lapse of time, and the staleness of the claim, in "cases where no statute of limitations directly governs the "case. In such cases, courts of equity act sometimes by anal- "ogy to the law, and sometimes act upon their own inherent "doctrine of discouraging, for the peace of society, antiquated "demands, by refusing to interfere, when there has been gross "laches in prosecuting rights, or long or unreasonable acquies- "cense in the assertion of adverse rights."

The Supreme court of the United States, in the case of *Grimes* v. *Sanders*, 93 U. S., 55, says: "Where a party de- "sires to rescind upon the ground of mistake or fraud, he must, "upon the discovery of the facts, *at once announce his purpose* "*and adhere to it.* If he be silent, and continue to treat the "property as his own, he will be held to have waived the ob- "jection, and will be conclusively bound by the coutract, as if "the mistake or fraud had not occurred. He is not permitted "to play fast and loose. *Delay and vacillation are fatal to the* "*right which had before subsisted.* * * * A court of equity "is always reluctant to rescind, unless the parties can be put "back in *statu quo.* If this cannot be done, it will give such

"relief only where the clearest and strongest equity impera-
"tively demands it."

Equity will rescind only within reasonable time.

"It is a well settled rule in equity, that where a party seeks
"to rescind a contract for fraud, he must ask the aid of the
"court in a reasonable time, and be in a situation to restore to
"the opposite party whatever he may have received from
"him."

Cunningham v. *Fithian*, 2 [Illinois] Gilman, 650.

"Where a party has knowledge of the facts entitling him to
"equitable relief, and rests, without taking any steps to assert
"his rights, for nearly seven years, giving no excuse for his
"delay except ignorance of the law, his laches will be such as
"to bar his right to relief. It is otherwise when the party is
"ignorant of the facts affecting his rights, until shortly before
"suing."

Breit v. *Yeaton*, 101 Ill., 242.

"Where a party, with full knowledge of all the facts, sleeps
"upon his rights for nineteen years without asserting his
"equities, and no sufficient excuse is shown for the delay, his
"laches will be such as to present a bar to relief in a court of
"equity. A court of equity will not enforce a stale demand."

Castner v. *Walrod*, 83 Ills., 171.

"The remedy by bill to rescind an executed contract for the
"exchange of land on the ground of fraudulent misrepresenta-
"tion must be invoked with reasonable diligence. A delay of
"seventeen months after the discovery of the fraud before
"filing the bill to rescind, is an unreasonable delay, which a
"court of chancery will not tolerate."

Cox v. *Montgomery*, 36 Ill., 396.

In a suit by a vendee to set aside a sale of land on the

ground of fraud, the fraud alleged was representation that the land was good farming land, whereas, in fact, part of it was a morass, and the soil consisted of a thin layer of mold overlying sand, and it appeared that complainant had bought and taken possession of the land in February, and had made no complaint until October following, and that during the interval he spent about half of his time on the land, made valuable improvements thereon, and frequently expressed satisfaction with his purchase, held, that he was guilty of laches in not rescinding the contract as soon as he couid ascertain the character of the land.

Greenwood v. *Fenn*, 26 Northeastern Rep., 487, decided by the Supreme court of Illinois, January 26, 1891.

The court said:

"If, then, it be admitted that the exchange by the complain-
"ant of his Chicago property for said Wisconsin lands was
"induced and brought about by the fraudulent representations
"of Slayton and Fenn, as alleged, the transaction was not void,
"but only voidable at the complainant's election; and, if he
"wished to avoid it, it was incumbent upon him to make his
"election so to do promptly after becoming aware of the fraud.
"His continuing to treat the land as his own, and especially
"his voluntarily proceeding with the construction of valuable
"improvements thereon, and availing himself of the uses and
"the profits thereof, after becoming fully appraised of the
"fact, may be fairly held to establish an election on his part to
"affirm the transaction, and after having once made his elec-
"tion, he must be held to it, and cannot be permitted afterward
"to rescind." Citing, *Grymes* v. *Sanders*, 93 U. S., 55, and 2 Pom. Eq., Sec. 897, which we have already quoted.

III.

No Notice to Lot Chadwick that the Notes were Unpaid.

Whether the notes were paid or not, Lot Chadwick had no notice of the condition of affairs existing between Ruggles W. Clapp and McLean. It is said, however, that the mortgage was unreleased of record, and that was notice to Henry Clapp and Lot Chadwick. This we believe to be an error in this case. Ordinarily such is the rule. Here, it must be remembered that the notes had been surrendered; there was an absolute settlement of them, and under that settlement they were properly given to Ruggles W. Clapp and by him just as properly surrendered to Henry Clapp; and this surrender was accompanied with the statement by R. W. Clapp to Henry that they were paid, and that a release of the mortgage had been given by McLean. At that time the debt had been paid and the mortgage satisfied for the time being. This was true, even if it was accomplished by fraud, until it was rescinded by McLean, so far as third persons were concerned. Henry Clapp then, in 1869, sold the property to Lot Chadwick, who understood the notes were paid. (Rec., 396; folio, 716; Rec., 628, 329.)

Under these circumstances, the possession of the notes by the owner of the land was *prima facia* evidence of payment.

2 Jones Mort., Sec. 913, 3d Ed.

That author says: "The possession of the mortgage note "by the mortgagor, or those claiming under him, raises a pre- "sumption, in the absence of all other proof, that it has been "paid. This presumption is one of fact and not of law, and "may be rebutted by evidence accounting for the mortgagor's "possession of the note without having paid it. The mort-

"gagor's possession of the mortgage note, even after it is due,
"is not conclusive evidence of its payment—only *prima facia;*
"but such possession continued for a long time and unques-
"tioned by the mortgagee after full knowledge of the fact,
"affords the strong presumption that the debt has been paid."

Flower v. *Elwood*, 66 Ill., 438.
Richardson v. *Cambridge*, 2 Allen, 118.
Gardner v. *James*, 7 R. I., 396.

The cases cited by appellant on this subject (*Darst* v. *Bates*, 51 Ill., 439, and others), are not in point, for in those cases it is properly held that, where the notes secured by a mortgage are surrendered WITH NO INTENTION OF RELINQUISHING THE MORTGAGE LIEN, but new notes are given, the payment of which it is agreed the mortgage shall secure, the parties to the arrangement cannot insist afterwards that the mortgage lien was thereby lost.

Lot Chadwick, then, had no notice from the record. It is necessary for them to prove that he had actual notice, or such notice as would put him on inquiry.

The burden is upon plaintiff in error to prove such notice, Their proof consists of the testimony of Martin L. Arnold. who, if he tells the truth, testifies to enough to make notice. (Rec., 154, 155.)

But Arnold's testimony is absolutely unworthy of consideration; he was completely impeached in this case, and the records show that he has been impeached in many other law suits in Lee county.

Arnold is partially sustained by Fletcher D. Clapp, if he tells the truth; but he could not possibly have known what he attempts to swear to. He was *but eleven years old* at the time of these transactions. His testimony was taken about *fifteen years* afterwards, and is false upon its face. He is a fit person,

though young in years, to associate with Ruggles W. Clapp and Martin L. Arnold.

This is all the proof of notice there is, and it falls to the ground of its own weight.

But Lot Chadwick and Henry Clapp absolutely deny the statements of Arnold and Fletcher D. Clapp. The burden of proof was upon the appellants, and they have failed to sustain it.

IV.

Lot Chadwick was a Bona Fide Purchaser.

Lot Chadwick purchased this land in good faith and paid ten thousand dollars for it, a fair price. His testimony is this: The price was ten thousand dollars. Well, I paid in the first place $2150; I next paid an execution that E. Lee Clapp had against Woodbridge Clapp for seven hundred and sixty dollars and eighty-seven cents. In the next place I paid ten dollars for the stamps, going to Dixon seven dollars. I next paid Trowbridge, I think, one hundred and seventy dollars, but am not certain. Then I paid Mr. Truesdell two hundred and forty-four dollars on two executions of *Emerson* v. *Henry Clapp*. I paid Mr. Tooker for an execution of Harriet Chase, one hundred and twenty-four dollars and some cents, don't remember how many. I paid Dr. Gardner on an execution one hundred and forty-eight dollars. I paid Mr. Little, back taxes, could not state exact amount. It was one hundred and sixty or seventy or eighty dollars, somewhere about that. I paid for back tax another year several amounts to several parties; I don't remember all the separate amounts, but do recollect the aggregate which was just two hundred. I paid Chas. F. Ingals. I paid part of this back tax to John Dement and E. B. Stiles and Jason Ayres;

the sums particularly I cannot recollect, but the aggregate was two hundred dollars. I paid ten dollars for a cemetery lot. I paid three dollars for completing an abstract. I don't recollect anything more of these items. I paid in addition to that Mr. Clapp's notes, which amounted, in the aggregate, to six thousand and seventy dollars. (Rec., 388-9, folio 701.) Of the $2,150 payment mentioned, he says $1,000 was paid in Sherman Shaw's note, and $1,000 was paid in Lee county bonds, and the interest upon the bonds and note amounted to $150. (Rec., 389, folio 702.) The other notes of Henry Clapp which went to make np the consideration of ten thousand dollars were handed over to Henry Clapp shortly afterwards, as per agreement. He subsequently bought of Henry Clapp the Sherman Shaw note, because there was a difficulty between Mr. Shaw and Henry Clapp's family, in consequence of which Clapp was unwilling to keep and collect the note. (Rec., 416, folio 755; Rec., 380, folio 585, cross-interrogatory 50).

The McLean mortagage, from the first he ever heard of it, was thought to be dead; it had been some twelve years or more since the notes were taken up; it was thought there was nothing more to be done about it but to make out a release if the one which was thought to be in existence could not by found. (Rec., 396, folio 716.)

This statement of the consideration for this conveyance is substantially corroborated by Henry Clapp, the grantor. (Rec., 329, 330; folio 572-3.) And by the testimony of A. Z. Bodine, (Rec., 348, folio 611,) although the latter witness only knew of what transpired at the time of the execution and delivery of the deed.

There are some minor details in which these witnesses do not agree, but the very circumstance that they do so differ on minor points, but on the vital facts are corrobotive of Lot

Chadwick, indicates more certainly, we believe, the truth of the facts to which he and they testify. To overcome this evidence the appellants resorted to the testimony of a son of Henry Clapp, by whom they seek to show that the transaction between Lot Chadwick and Henry Clapp was fictitious.

This testimony of Fletcher D. Clapp is completely denied in every substantial detail by Lot Chadwick, (Rec., 394, 395, 396; folio 711 to 715,) and by Henry Clapp (354 to 358, folio 623 to 633, inclusive), and A. Z. Bodine denies Fletcher's presence on the day the deed was made and other statements to which he testifies. (Rec., 348–9.) The testimony of Fletcher D. Clapp, however, carries inherent evidence of its own falsity, and without contradiction would not be worthy of credence, for this reason. It was given on the 17th of April, 1883; he was then twenty-six years of age (Rec., 138; folio 281); this transaction at which he claims to have been present and of which he pretends to be able to give details of the conversation which took place, occurred on the 1st of March, 1869, Fletcher D. Clapp was then eleven years of age. It is not possible for a boy of that age to remember, after the lapse of a period of fourteen years, the details of those conversations so as to testify to them in the manner in which he has undertaken to do in this case. He says that he first heard his father and mother in the fall or winter of 1867 (HE WAS THEN TEN YEARS OLD) talking over the McLean mortgage, and undertakes to tell parts of that conversation. (Rec., 139; folio 282.) On the return of his father, in the spring of 1868, he says a conversation occurred between his father and stepmother and Lot Chadwick relative to the claim of McLean and Arnold, and he undertakes to relate the subtance of that conversation, (Rec., 139,) (the witness was then TEN YEARS OLD). He says that after that, shortly, Arnold came to Chadwick's and he undertakes to relate the conversation occurring

at that time between Lot Chadwick and Henry Clapp and Arnold relative to the McLean mortgage. This also was while the precocious witness was ten years of age. The story of this witness is too preposterous for belief.

Lot Chadwick was possessed of ample means to make the payments which he claims to have made and undoubtedly possessed the money and bonds he testifies to have made use of, in so doing. (Rec., 402-405, folio 727 to 732, inclusively.) He was seventy-five years of age when he made this purchase, and when he gave his testimony in this case, July 16, 1883, he was ninety-one years old. (Rec., 388.) One of his years is not lightly to be presumed to have engaged in such a fraudulent enterprise as appellants would have it believed this was, and at the age of ninety-one years attempt to fortify it by perjury.

He gave testimony in a case between himself and Edwin Clapp (an abstract of which is incorporated in this record) when he was seventy-nine years old, (Rec., 78, folio 179), a period of twelve years having elapsed between the two occasions. When testifying in the present case he said; "I "have not refreshed my memory at all about it. It is now "twelve years since I looked at the figures. I was intending "to look at the figures again, before I signed these, and if I "was mistaken to correct it." (Rec., 398; folio 720.) Yet because some variation can be detected in his statement of the transaction whee testifying in this case, from the narrative form of his testimony as set forth in the abstract of it in the Edwin Clapp case, gives occasion for considerable comment in the brief for appellants; yet no radical differences exist in his actual testimony on those two occasions when he undertakes to state what transpired when he bought the land on March 1, 1869.

In the Edwin Clapp case, where Lot Chadwick had filed a

bill in chancery against Edwin Clapp to restore a lost deed, (the deed for an undivided half of the land involved in this case, and which had never actually been spread upon the records of the recorder's office in Lee county, Illinois,) he was called as a witness by the defendant Edwin Clapp. In giving his testimony then, he first stated that in the cash payment made on the day the deed was executed, both money and bonds were paid. (Rec., 78, 9). But before his examination closed on that occasion he corrected this mistake in his testimony; that correction is not fully set forth in the abstract of the evidence in the Edwin Clapp case, but what is there set forth is as follows:

"When the deed was made, I gave Henry Clapp $1,000 in "Lee county bonds, of $100 each. The bonds that I gave "him before were United States bonds; five-twenties, I think. "I gave then also a $1,000 note, signed by Sherman Shaw & "Son, which note I bought back soon afterwards. Witness "explains that when he gave the testimony the other day he "was t ired and sick, and upon consideration he deposes as "above." This is taken from the the document put in evidence in this case which was an abstract of the record of the evidence in the Edwin Clapp case, prepared and used upon the hearing of that case in the Illinois Supreme Court.

In the cross-examination of Lot Chadwick when testifying in the present case, questions were asked him designed to develop the fact that he had in the Edwin Clapp case stated that, on the occasion referred to, he paid some money, and his former testimony was quoted, and interrogatories then put to him; this examination is shown at pages 414, 415 (folio 750–1–2–3), and there the witness distinctly states, "I did not pay "any money. That was a mistake. If it is taken from the "record, it is a mistake, because I said always that I paid him "two thousand one hundred and fifty dollars in Sherman "Shaw's note and Lee county bonds." And further on

(folio 754) he says, "I corrected in that paper which pur-
"ports to be the abstract of my testimony. I said that I mis-
"took the transaction, and in correcting it said that I paid him
"one thousand dollars in Lee county bonds and Sherman
"Shaw & Son & Co.'s note of hand for one thousand dollars."
And upon his re-direct examination on that occasion he was asked: "Q. In your answer to the cross-interrogatory 133,
"referring to your deposition in the Edwin Clapp case, you
"say 'I corrected in that paper which purports to be the ab-
"stract of my testimony,' do you or not by that mean the de-
"position itself, and that you corrected it in that deposition?"
To which he answered, "I certainly meant the deposition
"itself."

All of this, and more, appears in the record in this case, establishing that his mistake was corrected on the occasion of first testifying; that it arose from the fact that he was at the time sick and by reason thereof confused the matter under investigation with some other transaction. This explanation is entirely overlooked in appellants' statement of his testimony on that important branch of the case.

This circumstance only serves to illustrate the necessity for the rule requiring diligence to be exercised in attacking any transaction and seeking to have it set aside, where the rights of parties are dependent upon the human memory.

"But length of time necessarily obscures all human evi-
"dence, and as it thus removes from the parties all the imme-
"diate means of verifying the nature of the original transac-
"tions, it operates by way of presumption in favor of inno-
"cence and against imputation of fraud. It would be un-
"reasonable, after a great length of time, to require exact
"proof of all the minute circumstances of any transaction, or
"to expect a satisfactory explanation of every difficulty, real or
"apparent, with which it may be encumbered. The most

"that can fairly be expected in such cases, if the parties are "living, from the frailty of memory and human infirmity, is "that the material facts can be given with certainty to a com- "mon intent, and if the parties are dead, and the cases rest in "confidence and parol agreements, the most that we can hope "is to arrive at probable conjectures and to substitute general "presumptions of law for exact knowledge. Fraud or breach "of trust ought not lightly to be imputed to the living, for the "legal presumption is the other way; and as for the dead, who "are not here to answer for themselves, it would be height of "injustice and cruelty to disturb their ashes and violate the "sanctity of the grave, unless the evidence of the fraud be "clear beyond a reasonable doubt."

Prevost v. *Gratz*, 6 Wheaton, 481.

The evidence in the record sustains the decree of the Circuit court; the bill was properly dismissed, and the decree should be affirmed.

SHERWOOD DIXON,
S. H. BETHEA,
Of Counsel for Appellees, Heirs of Lot Chadwick.

DIXON, Lee Co., Ill.

Office Supreme Court U. S.
FILED.
MAY 3 1890
JAMES H. McKENNEY
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 623.

JULIA H. McLEAN ET AL., APPELLANTS,

against

RUGGLES W. CLAPP ET AL.

Suggestions by Appellees on Motion of Appellant to Reverse and Remand Case.

FIRST.

This motion should not be granted, because Ruggles W. Clapp and Emily Clapp, his wife, were not necessary and indispensable parties.

This cause was heard and decree entered in the circuit court on the merits. No question of jurisdiction was ever made in the case until now.

It was a bill brought to foreclose a mortgage given by Ruggles W. Clapp and Emily, his wife, to Edwin W. McLean in his lifetime. Ruggles W. Clapp, with his wife, after the giving of the said mortgage and before the beginning of this suit, conveyed by quitclaim deed all their right, title, and interest in this property to Henry Clapp. The date of the mortgage was December 4, 1855. The date of the deed was January 10, 1868. The date of the beginning of this suit

was May 2, 1872. At the time of the beginning of this suit Ruggles W. Clapp had no interest in the land in controversy. The bill of complaint does not ask for any personal relief as against Ruggles W. Clapp and his wife. We append hereto an abstract of said bill, with the prayer copied in full.

The mortgagor, after he has conveyed the whole of the mortgaged premises, is not a necessary party to the suit unless a personal judgment for any deficiency there may be, after applying the property to the debt, is sought against him.

2 Jones on Mortgages, sec. 1404.
Foster's Federal Practice, sec. 44, p. 84.

This rule is recognized by the Supreme Court of the United States.

Ayres *vs.* Wiswall, 112 U. S., p. 187.

This is the rule in Illinois.

Puterbaugh's Chancery Practice, edition 1888, p. 443.
Marsh *vs.* Green, 79 Illinois, p. 385.
Stiger *vs.* Bent, 111 Illinois, p. 336.

The Supreme Court of the United States has laid down the following rules as to parties: There are three classes of parties—formal parties; parties necessary to a decree which completely disposes of the controversy, so that the aid of the Court need not be invoked again, but whose interests are so far separable from those of the parties before the Court that it can dispose of the controversy between the latter without affecting the interests of the former, and parties with an interest in the controversy " of such a nature that a final decree cannot be made without either affecting that interest or leaving the controversy in such a condition

that its final determination may be wholly inconsistent with equity and good conscience."

Foster's Federal Practice, sec. 50, p. 94.
Shields *vs.* Barrow, 17 Howard, p. 130.
Williams *vs.* Bankhead, 19 Wallace, p. 563.

Under these rules, then, Ruggles W. Clapp and Emily, his wife, were not indispensable parties. The circuit court could have proceeded with the case and entered judgment disposing of the matter in controversy without their being in court. They were unnecessary parties.

Formal parties can also be omitted if without the jurisdiction of the court, and their joinder, no matter whether as plaintiffs or defendants, cannot oust the court of jurisdiction, as they are in reality upon neither side of the controversy.

Foster's Federal Practice, sec. 51, p. 95.

The objection for want of parties at the hearing of the appeal will not avail unless such parties are indispensably necessary.

Mechanics' Bank of Alexandria *vs.* Seton, 1 Peters, p. 299.
Livingston *vs.* Woodworth, 15 Howard, p. 546.

If the joinder of the party would defeat the jurisdiction and the decree can be so framed as not to affect his interest, such party may be stricken out and suit may proceed.

Vatier *vs.* Hinde, 7 Peters, p. 252.

If, then, it be true that Ruggles W. Clapp and Emily Clapp, his wife, were at the time of the beginning of this suit, on May 2, 1872, citizens of the District of Columbia, that fact does not oust the Federal courts of jurisdiction, because, as above shown, they were not necessary parties.

SECOND.

At the time of the beginning of this suit, on May 2, 1872, Ruggles W. Clapp and Emily, his wife, were citizens of the District of Columbia. The bill, drawn by Messrs. Williams and Thompson, of Chicago, was filed on May 2, 1872, and shows, as stated in this motion, that these persons, Ruggles W. Clapp and Emily Clapp, were then citizens of the District of Columbia.

The affidavits of Mr. and Mrs. Rice, filed in support of this motion, are far from satisfactory, and, we submit, do not fairly raise a doubt as to the citizenship of Ruggles W. Clapp at the time of the filing of the bill, May 2, 1872. In opposition thereto we are able to show, and shall file with these suggestions, a certified copy of a deed made by said Ruggles W. Clapp, dated and executed on the 3d of May, 1872, which shows that he on that day declared himself to be "of Washington, D. C." We shall also file the affidavit of Isaac Edwards, grantee in that deed, showing that the transaction mentioned in the deed actually occurred on that day. Here, then, we have proof that Ruggles W. Clapp, on the day after the filing of this bill, was declaring himself in effect a citizen of the District of Columbia. The affidavits filed with this motion, on the other hand, do not pretend to set forth even a declaration of Ruggles W. Clapp that he had at any time changed his residence or lost his citizenship, which it would seem from those affidavits it is conceded was at one time in the District of Columbia. Until he acquired citizenship elsewhere, we respectfully submit he continued a citizen of the District. It is not shown that he had acquired citizenship in Minnesota or New York.

It is incumbent upon the appellants to show conclusively that the Federal courts have and had jurisdiction of the parties and subject-matter. Nothing will be presumed in their favor upon those propositions. The mere proof that

Ruggles W. Clapp was outside of the District of Columbia does not demonstrate that he was not a citizen of the District of Columbia.

Foster's Federal Practice, section 19, p. 27.
Shelton *vs.* Tiffin, 6 Howard, p. 163.
Foster's Federal Practice, section 293, p. 437.

Upon the above suggestions and authorities, we respectfully submit that the Court should not grant the motion to reverse and remand this cause.

If, however, it should be found that, in the judgment of the Court, a proper case for reversing it has been made out, we further suggest that it should be done at the cost of the appellants. Such we understand to be the rule enforced in cases where motions of this character have been granted; to which we cite—

Railway Co. *vs.* Swan, 111 U. S., p. 379.
Foster's Federal Practice, pp. 437 and 616.

And the proceedings in the circuit court, if it is remanded, we believe, should be restricted to the one question of the citizenship of Ruggles W. Clapp on the day the bill was filed.

Respectfully submitted,

SHERWOOD DIXON,
Counsel for Appellees, Abigail L. Haskell and Others.

Office Supreme Court U. S.
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Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 623.

JULIA H. McLEAN ET AL., APPELLANTS,

against

RUGGLES W. CLAPP ET AL.

Abstract of Bill and Other Matters Filed by Appellees in Opposition to Motion to Reverse and Remand.

ABSTRACT OF BILL OF COMPLAINT.

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2 The original bill of complaint in this cause sets forth that on December 4, 1855, Ruggles W. Clapp was indebted to the complainant, Edwin W. McLean, in the sum of $5,918.66, for goods sold to him, and that to secure the same he, on that day, made and delivered to McLean four promissory notes of that date, payable to McLean—one for $500.00, due in twenty-five days; one for $1,000.00, due in five months; one for $1,209.33, due in eleven months, and one for $2,209.33, due in

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3 seventeen months—all bearing interest at ten (10) per cent. per annum; that said Ruggles W. Clapp and Emily Clapp, his wife, also to secure said debt, executed and delivered to McLean a mortgage of a tract of land situated in Lee county, Illinois, the said Ruggles W. Clapp being then the owner thereof in fee; that the mortgage referred to was duly acknowledged and re-

4 corded in the recorder's office of said Lee county on the 6th day of December, 1855; that of said notes, the one for $500.00 has been paid; that the remainder of them have not been paid, except in part by certain small credits thereinafter mentioned; that said notes at about the time of their execution were deposited with one William E. Ives, at Amboy, Illinois, an attorney then retained by McLean, to collected them; that Ives did not obtain the money on said notes or any part thereof, except the said $500.00; but, on the contrary, he fraudu-

5 lently and without consideration gave up said notes to said Clapp in this manner: that some time in the year 1857 Ives applied to McLean for permission to make an exchange of securities with Clapp, representing that Clapp would pay $1,000.00 cash and give notes well secured for the remainder, which permission McLean gave on the condition that $1,000.00 should be paid in cash and the remainder perfectly secured, and Ives was strictly enjoined by McLean not to deliver up said notes until the cash payment of $1,000.00 was actually made; but notwithstanding these instructions and in violation thereof Ives delivered said notes to Clapp and received from him instead of the cash payment of $1,000.00 said Clapp's draft on one Alfred Clapp, of New York, dated December 4, 1857, payable in sixty days, which draft was protested for non-payment and has never paid, excepting the sum of $254.00, which was paid March 23, 1859; and, instead of well-secured, good notes, for the remainder of said indebtedness said Ives received the

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notes of several parties (mentioning them and averring that all of the notes so taken were worthless and known by Ives and Clapp to be so at the time), and as pretended security for said notes Ives received three separate deeds of real estate from said Clapp to com-
7 plainant, and also executed his own (Ives') deed to certain real estate in Amboy, Illinois (setting forth descrip-
8 tions of the same); that said notes were, and always have remained, worthless by reason of insolvency of makers; and of the real estate, some was already mortgaged to its full value and other of it was of no value;
9 that the $254.00 paid on said draft and $850.00, received from sale of a small portion of said lands, are all complainant has ever received on account of said indebtedness.

9 The bill sets forth that McLean was at the time a resident of Massachusetts, and did not discover the fraud that had been practiced upon him until many years afterwards; that in the meantime Clapp had removed from Illinois and his whereabouts remained unknown to McLean for a time, and as soon as McLean discovered him he repudiated the action of said Ives and demanded his notes.

10 The bill further charges that on or about the 10th day of January, 1868, Ruggles W. Clapp and wife conveyed by quitclaim deed to Henry Clapp the lands described in said mortgage for the expressed consideration of one dollar; that on or about March 1, 1869, said Henry Clapp and wife conveyed the same to Lot Chadwick for the expressed consideration of $10,000.00, and that Chadwick is now in the possession of said lands. It charges that the conveyance to Henry Clapp was made without consideration, and that the conveyance to Chadwick was made for a consideration very much less than $10,000.00, and that the consideration therefor was not over $1,000.00, although the value of

Record page.

the lands is over $15,000.00, and that both said Chadwick and Henry Clapp before receiving their said deeds.
11 well knew the circumstances of the exchange of securities so made by said Ives, and they both took their respective conveyance with full notice and knowledge of McLean's rights in the premises; that the mortgage mentioned has always been in McLean's possession, "and the said conveyances to Henry Clapp and Chadwick only passed the equity of redemption of said Ruggles W. Clapp and wife in said premises."

The prayer of the bill is "that the several sums of money due to your orator, as evidenced by the said promissory notes, may be declared to be still secured by the said mortgage, and that said notes may be declared and decreed to be a still subsisting indebtedness and secured by said mortgage; that the said notes and deeds taken by said Ives in said pretended exchange may be ordered to be taken back by the person or persons who may be found to be entitled thereto, and that an account may be taken of the amount due your orator
12 by reason of the premises, and the said mortgage foreclosed according to the course and practice of this court, and that your orator may have such further or such other and different relief as the nature of the case may require and as may be agreeable to equity."

The record in this case also shows that Ruggles W. Clapp was served with process within the northern district of Illinois. (Record, page 14.)

The decree in the cause is: Now again come the parties herein, and the court, having considered and being fully advised upon the matters submitted herein upon the pleadings and proofs, finds the equities with the defendants. It is therefore ordered that the bill herein be dismissed for want of equity, at complainants' costs, and that execution issue. (Record, page 104.)

Affidavit of Isaac Edwards.

Supreme Court of the United States. October Term, A. D. 1889.

JULIA H. McLEAN *et als., Appellants,*
against
RUGGLES W. CLAPP *et als.*
} No. 623.

STATE OF ILLINOIS,
County of Lee.
}

Isaac Edwards, being first duly sworn, on his oath says that he is a resident of the city of Amboy, in said county of Lee and State of Illinois, and has resided in said Lee county for over thirty years last past; that he was well acquainted with the above-named Ruggles W. Clapp, who at one time lived in said Amboy; that he purchased of said Ruggles W. Clapp a tract of land and received from him a deed therefor, which land is described as the south half of the southwest quarter of section one (1), in township nineteen (19) north, of range nine (9) east, in the said Lee county; that affiant now has said deed and in the same the said Ruggles W. Clapp describes himself as being of Washington, in the District of Columbia, in these words, "of Washington, D. C;" that said deed is dated on the 3d day of May, A. D. 1872, and was acknowledged on that day and filed for record in the recorder's office of said Lee county on the 4th day of May, A. D. 1872.

Subscribed and sworn to before me this 29th day of April, A. D. 1890.

CHARLES E. IVES,
Notary Public.

Deed of Ruggles W. Clapp to Isaac Edwards.

This indenture, made the third day of May, in the year of our Lord one thousand eight hundred and seventy-two, between Ruggles W. Clapp, of Washington, D. C., party of the first part, and Isaac Edwards, of the city of Amboy, Lee county, Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of one thousand dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, has remised, released, sold, conveyed, and quitclaimed, and by these presents does remise, release, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns forever, all right, title, interest, claim, and demand which the said party of the first part has in and to the following-described lot, piece, or parcel of land, to wit:

The south half of the southwest quarter of section number one (1), in township number nineteen (19) north, range number nine (9) east, containing eighty acres of land, more or less, according to the Government survey:

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

And the said Ruggles W. Clapp, party of the first part, hereby expressly waives, releases, and relinquishes unto the said party of the second part, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises and each and every part thereof which is given by or results

from all laws of this State pertaining to the exemption of homesteads.

And the said party of the first part, for himself and his heirs, executors, and administrators, does covenant, promise, and agree to and with the said party of the second part, his heirs, executors, administrators, and assigns, that he hath not made, done, committed, executed, or suffered any act or acts, thing or things, whatsoever, whereby or by means whereof the above mentioned and described premises or any part or parcel thereof now are or at any time hereafter shall or may be impeached, charged, or incumbered in any way or manner whatsoever.

In witness whereof the said party of the first part hereunto set his hand and seal the day and year above written.

RUGGLES W. CLAPP. [SEAL.]

Signed, sealed, and delivered in presence of—

—— ——.

STATE OF ILLINOIS, } ss:
Lee County, }

I, Alfred Tooker, a notary public in and for said county and the State aforesaid, do hereby certify that Ruggles W. Clapp, personally known to me as the same person whose name is subscribed to the foregoing instrument of writing, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this third day of May, A. D. 1872.

[SEAL.] ALFRED TOOKER,
Notary Public.

Filed for record the 4 day of May, A. D. 1872, at 4 o'clock p. m.

STATE OF ILLINOIS, } ss:
Lee County, }

I, Ira W. Lewis, clerk of the circuit court and *ex officio* recorder within and for said county and State aforesaid, and keeper of the records and seal of said court, do hereby certify the foregoing to be a full, true, and complete copy of a deed from Ruggles W. Clapp to Isaac Edwards, dated May 3, A. D. 1872, and recorded May 4, 1872, in Book " 27 " of Deeds, at page 286.

In testimony whereof I have hereunto subscribed my hand and affixed the official seal of said court, at my office, in Dixon, Illinois, this 29th day of April, A. D. 1890.

[SEAL.] IRA W. LEWIS,
Circuit Clerk.

Office Supreme Court U. S.
FILED.
MAY 3 1890
JAMES H. McKENNEY
CLERK.

C. G. Burgoyne's Printing Business, 146-150 Centre St., N. Y.

Supreme Court of the United States,

OCTOBER TERM, 1889.

JULIA H. McLEAN ET AL.

vs.

RUGGLES W. CLAPP ET ALS.

No. 623.

APPELLANT'S BRIEF

Upon Motion to Dismiss for Want of Jurisdiction.

I.

The record showing that two of the defendants were citizens of the District of Columbia, the U. S. Circuit Court had no jurisdiction.

Barney vs. Baltimore, 6 Wall., 281.
Cissel vs. McDonald, 16 Blatch., 150.

II.

If these defendants were not in *fact* citizens of this

District when the suit was commenced, this can be corrected in the Court below ; but not here, because the question is as to the conferring of *record* jurisdiction upon the *Circuit* Court. Cont. Ills. v. Rhoades, 119 US. 240.

Everhart v. Huntsville 120 U. S., 223.
King v. Otoe, *Ib.* 227, end of Op.
Metcalf v. Watertown, 128 *Id.* 590.

III.

No matter whether Ruggles W. Clapp was a *necessary* party or not; he (being the obligor and mortgagor of the mortgage sought to be foreclosed) was a *proper* party, and actually made a party. 6 Wall. 284.

Traders Bk. v. Campbell, 14 *Id.* 94.
Williams v. Bankhead, 19 *Id.* 563.

He is one of those persons whose "joinder would oust the jurisdiction of the Court," &c. (Eq. Rule XLVII.).

Though "not interested in the controversy between the immediate litigants, he has an interest in the subject-matter which may be conveniently settled in the suit," &c.

Williams vs. Bankhead, 19 Wall., 571, Thirdly :

The right to a foreclosure, and the nature of a decree therefor, depends upon proof of an indebtedness upon *his* bond, and the amount found due thereon.

If made party before a Court having jurisdiction, he would be estopped by the decree from denying the debt or its amount, so ascertained.

Fuller vs. Eastman, 81 Me., 288.
Mut. I. Co., vs. Newton, 50 N. J. Law, 577.

IV.

The Circuit Court having no jurisdiction, it was *error* for it to award costs against us, or decree aught as to the merits; for which error we are entitled to a reversal. 6 Wall, 281.

Mayor vs. Cooper, *Ib.*, 247.
Hornthall vs. Collector, 9 *Id.*, 560.

EDWIN B. SMITH,
Of Counsel for Appellants.

Office Supreme Court U. S.
FILED
MAY 3 1890
JAMES H. McKENNEY
CLERK

Supreme Court of the United States,

OCTOBER TERM, 1889.

JULIA H. McLEAN ET AL.,
Appellants,

AGAINST

RUGGLES W. CLAPP ET AL.

No. 1023.

Appellants' Motion to Reverse and Remand.

In the above-entitled cause, the appellants move to reverse the decree therein rendered against them by the Circuit Court of the United States for the Northern District of Illinois, for want of jurisdiction thereof in said Court, apparent upon its record, as returned to and filed in this Court; and that the plaintiffs have leave to amend their bill in the said Circuit Court, if so advised, as thereby to exhibit the facts (as to citizenship) actually existing at the time this action was commenced by filing of the original bill in said Circuit Court May 2, 1872.

JULIA H. McLEAN ET AL.,
By EDWIN B. SMITH,
Of Counsel for Appellants.

To SHERWOOD DIXON, and
S. H. BETHEA, ESQS.,
Solicitors for Defendants and Appellees in suit in equity of Julia H. McLean and others, against Ruggles W. Clapp and others:

GENTLEMEN—You are hereby notified that on Monday

5 the fifth day of May next, I will present to the Supreme Court of the United States, the motion of which the foregoing is a copy, supported by affidavits of which copies are hereto annexed.

EDWIN B. SMITH,
Of Counsel for Plaintiffs and Appellants.

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6 SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1889.

JULIA H. McLEAN ET AL.

AGAINST

RUGGLES W. CLAPP ET ALS.

No. 623.

7

CITY AND COUNTY OF NEW YORK, ss.:

EDWIN B. SMITH, of the City and County of New York, deposes that he is the counsel for the appellants in this Court in this action, but had no connection with it in the Court below and knew nothing about it there, and the transcript was here filed without being seen by him, having been forwarded to the Clerk of this Court directly from Illinois; that it was not until just before
8 the commencement of the current Term, upon examining briefs and papers transmitted to deponent by former counsel, that deponent was led to infer that the record, original bill and bill of revivor indicated an apparent want of jurisdiction of the Circuit Court of the United States for the Northern District of Illinois over the cause, by reason of the citizenship of two of the defendants (Ruggles W. Clapp and Emily, his wife), be-

ing alleged to be in the District of Columbia; that after the commencement of the current Term of this Court, deponent examined the transcript here filed and found the *only* averments of citizenship upon the record to be these: 9

"UNITED STATES OF AMERICA,
Northern District of Illinois.

To the Judges of the Circuit Court for the Northern District of Illinois:

Edwin W. McLean of the State of New Hampshire and a citizen of the State of Massachusetts brings this his bill against Lot Chadwick, Henry Clapp, William E. Ives, Jeremiah Tondrew, Nicholas Shuffelt, John Hinderman and Conrad Mealhouse, all of Lee County, Illinois, and citizens of the State of Illinois, and Ruggles W. Clapp and Emily Clapp his wife, of Washington, and citizens of the District of Columbia, and thereupon your orator complains and says: 10

That Ruggles W. Clapp, being on the fourth day of December A. D. 1855, indebted to your orator in the sum of" . . .

11

Only Lot Chadwick, Henry Clapp and William E. Ives answered the bill.

That after the death of Henry W. McLean (in March, 1875), the bill was revived by those succeeding to his interest, the bill of revivor (answered by Lot Chadwick), containing the same allegations as above with relation to the citizenship of Ruggles W. Clapp and wife; that deponent was led to believe, from a letter of said R. W. Clapp, dated at "Rices Crossing, Minn., May 24, 1872," found in the record as evidence, that 12 said Clapp was not in fact a citizen of the District of Columbia, May 2, 1872, when the bill was filed; that deponent searched the directories of Washington from 1865 to 1875, and found the name "R. W. Clapp" in that for 1869 and in no other; nor was the full name of "Ruggles W. Clapp" found there at all during those years; that thereupon the deponent wrote to Professor

George Edwin McLean of the State University of Minnesota, son of said Julia H. McLean, to procure some statement as to the citizenship of said Ruggles W. Clapp and wife May 2, 1872, and (less than one week ago), received from said George Edwin McLean the annexed affidavits of George T. Rice and Zeruiah F. Rice showing that said Ruggles W. Clapp and wife were not citizens of the District of Columbia May 2, 1872, but that said Ruggles had before then left the District for New York and gone thence to Minnesota; that, by the mention in said affidavits of the death of said Emily, deponent, was led to send to Washington for the record of the date of her death, and received from the Health Department of the District of Columbia the accompanying certificate relative thereto; whereby it appears that the judgment appealed from was rendered in favor of a deceased party.

That affiant has made repeated efforts to obtain knowledge of Clapp's actual citizenship in May, 1872, but has only just succeeded, and was not prepared to make the present motion at any earlier day; that he has applied to the clerk of this Court for an estimate of the expense of printing the entire record, and the sum estimated as necessary for that purpose was $1,220, which would be a heavy and unnecessary loss to appellants should the cause be disposed of here without consideration of the merits for want of jurisdiction in the Court below; for which reason the present motion is made to have the question of jurisdiction preliminarily determined with opportunity to amend (in the Circuit Court) the statement of citizenship, if the plaintiffs are so advised and the facts permit.

EDWIN B. SMITH.

Sworn to before me this 22d day of April, 1890.

BENJAMIN BARKER, JR.,
Notary Public,
N. Y. County.

STATE OF MINNESOTA, } ss.: 17
County of Benton. }

On this 10th day of April, A. D. 1890, before me, a notary public within and for the County of Benton and State of Minnesota, personally came George T. Rice and Zeruah F. Rice, his wife, who, being first each respectively sworn, do each severally depose and say viz.:

That they are now and have been for twenty-five years past residents and citizens of the State of Minnesota and County of Benton, town of Langola and village of Rices. 18

That they were residents and citizens of said State and town during the entire year of 1872.

That they are and were at that time (1872) well acquainted with R. W. Clapp, said Clapp being their brother-in-law, and that to the best of their knowledge and belief the said R. W. Clapp came at the beginning of May, 1872, from New York City, State of New York, to the State of Minnesota, and that said R. W. Clapp was in the State of Minnesota on or before May 2, 1872. 19

Further, that said R. W. Clapp was a resident at the home of these deponents in the County of Benton, Minnesota, during the months of May, June, July and August, and that in the autumn he went from Minnesota to California.

That to the best of their knowledge and belief the said R. W. Clapp had been a resident of New York City, State of New York, during the year preceding his coming to Minnesota in 1872. 20

That upon the death of Mrs. R. W. Clapp, the sister of Mrs. Zeruah F. Rice, one of the deponents, the home of said R. W. Clapp, in Washington, D. C., was broken up, and he had no residence or citizenship there there-

after, and was not a resident or citizen of Washington, D. C., in the years 1871 or 1872.

GEO. T. RICE, [SEAL.]
ZERUAH F. RICE, [SEAL.]

Subscribed and sworn to before me this tenth day of April, A. D. 1890.

HENRY FOX,
[SEAL.] Notary Public,
Benton Co., Minn.

STATE OF MINNESOTA, } ss. :
County of Benton. }

I, C. A. MOODY, Clerk of the District Court for the Seventh Judicial District and County aforesaid, the same being a Court of Record, do hereby certify that Henry Fox, before whom the annexed instrument was acknowledged, was, at the time of taking such proof or acknowledgment, a Notary Public in and for said County of Benton, and sworn and duly authorized to take the same; that I am well acquainted with the handwriting of such officer, and verily believe that the signature to said certificate of proof or acknowledgment is genuine. I further certify that said instrument is executed and acknowledged according to the laws of the State of Minnesota.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Sauk Rapids, Minn., this 10th day of April, A. D. 1890.

[SEAL.] C. A. MOODY,
Clerk.

By
Deputy Clerk.

HEALTH DEPARTMENT.

25

DISTRICT OF COLUMBIA.

WASHINGTON, April 16, 1890.

A TRANSCRIPT FROM THE RECORD OF DEATHS IN THE DISTRICT OF COLUMBIA.

Name of Deceased.	Date of Death.	Age of Deceased.
Mrs. R. W. Clapp.	Feb. 17, 1869.	42. yrs. — mos. -- days.

26

Color, Sex, Social Condition and Occupation.	Birthplace.	How long a resident in District of Columbia.
White, Female, Married.	Mass.	2 yrs. -- mos. — days.

27

Cause of Death.	Place of Death.	Duration of Last Sickness.
Consumption.	(Not given.)	(Not given.)

Place of Burial.	Medical Attendant.	Undertaker.
Forwarded to Mass.	(Not given.)	(Not given.)

28

(A true Copy.)

[SEAL.] SMITH TOWNSEND, M. D.,
Health Officer and Registrar.

Attest :
J. C. MCGINN,
Chief Clerk,

Office Supreme Court, U. S.
FILED.
OCT 27 1890
JAMES H. MCKENNEY
CLERK.

C. G. Burgoyne's Printing Business, 146-150 Centre St., N. Y.

Supreme Court of the United States,

OCTOBER TERM, 1890.

JULIA H. McLEAN *et al.*,
Executors, etc.,

AGAINST

RUGGLES W. CLAPP *et als.*

No. 317.

Motion to Reverse and Dismiss for Want of Jurisdiction.

The plaintiffs in error move to reverse the judgment of the Circuit Court in this case, for want of jurisdiction in that Court to render any judgment in the cause, except one dismissing the same for want of jurisdiction.

JULIA H. McLEAN *et als.*, Executors,
By EDWIN B. SMITH,
Attorney for said Plaintiffs in Error.